SUPREME COURT OF THE UNITED STATES.

No. 78.

MARTIN PICKETT'S HEIRS, PLAINTIFFS IN ERROR,

VERSUS

SAMUEL LEGERWOOD ET AL.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF KENTUCKY.

INDEX.

	Original.	Print.
Parties' names	1	2
Petition for writ of error, coram vobis	1	2
Bond for costs	7	5
Writ of error, coram vobis	8	5
Agreement	10	6
Judgment	10	6
Exceptions filed, and exceptions	11	6
Record in ejectment, Pickett vs. Maxwell, &c.	15	8
Record in chancery case, Mitchell, &c., vs. Pickett's heirs	24	13
Bradley to Adair, deed	66	35
Adair to Roseberry, deed	68	36
Starke, &c. to Graves, deed	71	37
Starke to same, deed	73	39
Eastin, &c. commissioners, to Bramblet, deed	75	40
Sheriff of Bourbon to Starke, deed	78	41
Decree of Bourbon circuit court, and the executions issued on it	82	43
Patent to Bradley and Brown	85	44
Patent to same and same	86	45
Clerk's certificate	88	46
Writ of error	89	46
Citation and service	91	47

UNITED STATES OF AMERICA,
Seventh Circuit Court, Kentucky District, } *sct.*

Parties' names. **SAMUEL LEGERWOOD, WM. MITCHELL, WM. HENDERSON, HUGH ROSEBERRY,** and **JOHN GRAVES,** plaintiffs,
against
The heirs of **MARTIN PICKETT**, deceased, defendants. } *Writ of Error, coram vobis.*

Pleas before the honorable John McLean and John Boyle, Judges of the seventh circuit court of the United States of America in and for the district of Kentucky, held at the Capitol, in the town of Frankfort, at the November term of said court, in the year 1831.

Be it remembered, that, heretofore, to wit, on the 5th day of September, in the year 1831, came the said Samuel Legerwood, &c., by their counsel, into the clerk's office of the court aforesaid, and filed the following petition against the aforesaid defendants, to wit:

Petition. To the honorable Judges of the United States' circuit for the seventh circuit and Kentucky district: your petitioners, Samuel Legerwood, William Mitchell, Hugh Roseberry, William Henderson, and John Graves, humbly represent, that, in the year 1796, a certain Martin Pickett brought his action of ejectment in the district court of this district, against said William Mitchell and William Maxwell.

That your petitioner, Samuel Legerwood, under whose testator and father, William Legerwood, said tenants claimed, was made defendant with and for said tenants, and, in 1798, a judgment was obtained in said court in favor of said Pickett, but no writ of possession was ever executed in favor of said Pickett to this day; that the demise in said declaration was laid at ten years, and of course expired in 1806, and remained dead and inoperative for upwards of twenty-four, and nearly twenty-five, years, by which lapse of time, as your petitioners are advised, the possession ripened into a complete legal estate, and Pickett died, and, by his will, devised his claim to his five daughters and the children of a sixth; but, just before the last spring term, (Robert Wickliffe, esq., a counsellor at law of this court,) as attorney for Pickett's devisees, caused a notice to be served on William Mitchell, that he would move this court to amend the demise by inserting a new one, and by a [silent] motion in court; the first, made on the sixth day of the term, procured an order to be made inserting a demise of fifty years, without the knowledge of, or notice to any body interested in said land at this time, and said ex-parte order was not discovered till after the term was over, and now a writ of possession is in the hands of the marshal, and he is about to take possession of the land. Your petitioners are advised that the order is surreptitiously obtained, and that improvidently was authorized for errors in part, even if your petitioners were to waive the impropriety of bringing into life a judgment in ejectment perfectly dead for upwards of twenty years, and that for the following facts and reasons:

Said Pickett claimed under a patent, in his own name, of 5000 acres, and the tenants, those on the land, under a patent in the name of William Legerwood, posterior in date to that of Pickett, and advised thereto.

Said William Mitchell, the then tenant in possession, held by a bond on said William Legerwood for 314 acres, claiming part, at least, of its boundaries, and said Legerwood, the patentee, had died long before said judgment. and had devised the land to his sons, Samuel, your petitioner, and James; Several years after the judgment, the tract of Legerwood was sold under a judgment or decree of the Bourbon circuit court of the State of Kentucky, by execution thereon in favor of the devisees of said Pickett, and a certain Thomas Starke became the purchaser, and the sheriff conveyed to him the legal estate of Legerwood. That said William Mitchell sold out and gave up to Starke the purchase aforesaid, and moved away, or had moved away before said sale, and he now has, for many years, resided in Lewis county, near a hundred miles from the land, and has not ever since had the least interest in said land, and has not for many years been a tenant thereof; and this fact was well known to the counsel of Pickett's devisees, and particularly to Wm. P. Fleming, esq, their present agent, who procured said notice of the intended motion to be given; and said Mitchell, having no interest, gave not the least hint thereof to your other petitioners, who are tertenants, and the rest of your petitioners now use the name of said Mitchell as a legal party, leaving him at liberty to sever, if he shall chose so to do, as he will not interfere in this matter. They further show that said Thomas Starke departed this life intestate, and the land was divided among his children and heirs, of which your petitioner, Henderson, is one by marriage, his wife being a daughter of said Starke. That the children of said Starke sold to your petitioner, Graves, and conveyed to him, the part held by him within the claim of Legerwood. They show further, that the extent of the possession held by Maxwell, the tenant in the ejectment, when it was brought and tried, they have not the means of knowing; nor can they ascertain that he held any title, either legal or equitable, under Legerwood, but it is said that he settled under that claim, and he afterwards transferred his possession to a certain Thomas Paxton; and, covering the same land, there was an entry in the name of Brooks and Gillespie, patented in the names of James Brown and Leonard K. Bradley, adverse both to Pickett and Legerwood. That Bradley set up his own claim to the land, and Paxton agreed to surrender his possession on receiving payment for his improvements, which Bradley paid and took possession under his own adverse patent, and then he sold and conveyed the land to a certain Wm. Moore, who then possessed it for some time, and he sold and conveyed it to a certain Frances Adair, who next possessed it, and Adair then sold and conveyed it to a certain William Roseberry, and the said William Roseberry sold and conveyed it to your *orator* Hugh Roseberry, who now possesses it under the patent of Bradley and Brown.

They further show that part of the bond of Legerwood to Mitchell was, at the time of bringing the ejectment aforesaid, held in possession of John M. Hutchinson, on whom no declaration was served, and that some part is now held by your petitioner Henderson, and yet that part of it is claimed to be affected by the present writ of possession.

The foregoing is a succinct account of the transfers of said land since the judgment, and it is now held by your petitioners, Henderson, Graves, and H. Roseberry, who are the exclusive tertenants, and, as such, they are advised they are and were entitled to notice, even if the judgment was to have been revived by scire facias, and the said Mitchell has never been a tertenant for upwards of ten or twelve years, and has no interest therein.

The said Samuel Legerwood has never been a tertenant, but was entered defendant for those claiming under the title of his deceased father. And the said Maxwell abandoned the possession for many years, and has been dead, and they know not where his representatives are, and no notice was ever given to his representatives. They are advised that, under this state of facts, their relief is by a writ of error coram vobis, to reverse and annul said order renewing the demise, and to quash the impending writ of habere facias possessionem, and they solicit such writ to be granted, and such other relief as their case requires; and, as in duty bound, they will ever pray.

SAMUEL LEGERWOOD.
WM. MITCHELL.
WM. HENDERSON.
H. ROSEBERRY.
JOHN GRAVES.

Assignment of Errors.

They say that, in the record and proceedings, manifest error hath intervened to their prejudice, in this, to wit:

1. The land in question has been possessed adversely upwards of twenty years after the first demise had expired, and, in such cases, no extension or renewal of the demise ought to have taken place.
2. Maxwell, the former tenant, was dead long since; therefore no renewal of the demise, as to him, ought to have taken place, without notice to his heirs or tertenants.
3. No notice was given to S. Legerwood, or his counsel, who defended as landlord of the premises.
4. It was collusive and fraudulent to give notice to Mitchell only, who was not tertenant, and who had no interest in the matter, and that fact was known to the devisees of Pickett, or their agent.
5. It was irregular to renew the demise after it had expired, without notice to the tertenants.
6. The whole proceeding was irregular, collusive, and void, and ought not to have been granted.

MILLS & BROWN, P. Q.

FRANKLIN COUNTY, *sct.*

Before me, the subscriber, a justice of the peace for said county, personally appeared William Henderson, Hugh Roseberry, and John Graves, and made oath, according to law, that the facts contained in the foregoing petition are true, so far as stated to be so from their own knowledge; and that they believe them to be so as far as stated to be true on the information of others. Given under my hand, this 30th day of August, 1831.

JAMES SHANNON, J. P.

UNITED STATES OF AMERICA, }
District of Kentucky, } *sct.*

Let a writ of error coram vobis issue agreeable to the petition aforesaid, upon the plaintiff giving bond, with security, for costs.

JOHN BOYLE.

JOHN H HANNA,
Clerk of Circuit Court for District of Kentucky.

Bond for costs.

Know all men by these presents, that we, Samuel Legerwood, William Mitchell, William Henderson, Hugh Roseberry, and John Graves, and Benjamin Mills, are held and firmly bound unto the heirs and representatives of Martin Pickett, deceased, in the just and full sum of five hundred dollars, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 5th day of September, 1831.

The condition of the foregoing obligation is such, that, whereas the above bound Samuel Legerwood have obtained a writ of error coram vobis, to stay all further proceedings on a writ of possession which issued from clerk's office seventh circuit court United States, Kentucky district, in name of Seekright, on dem: Martin Pickett vs. Wm. *Martin*, for 4000 acres land.

Now, if the aforesaid Samuel Legerwood, &c., shall prosecute the said writ of error with effect, or, on failure thereof, shall well and truly pay such costs as shall be awarded against them, then the obligation to be void, else to remain in full force and virtue.

[SEAL.]
[SEAL.]
B. MILLS. [SEAL.]

Witness, JNO. H. HANNA.

THE UNITED STATES OF AMERICA, *to the Marshal of the Kentucky District, greeting:*

Writ of error coram vobis.

Whereas, at the May term of the seventh circuit court of the United States of America in and for the Kentucky district, held at the Capitol, in the town of Frankfort, on the year 1831, in a motion to extend the demise in a certain suit wherein Seekright, (i. e.) Martin Pickett was plaintiff, and William Maxwell, &c. were defendants, the following order was made:

"On motion of the plaintiff, by his attorney, it is ordered that the demise laid in the plaintiff's declaration be extended to fifty years, and, thereupon, the plaintiff suggested to the court the death of the defendant William Maxwell." And because, in extending said demise, manifest error, as it is said, hath happened to the great damage of Samuel Legerwood, William Mitchell, surviving defendants in ejectment, and William Henderson, Hugh Roseberry, and John Graves, tertenants, as by their petition hath been stated, and we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties in this behalf: Therefore, we command you that you summon John Scott, and Elizabeth his wife, late Elizabeth B. Pickett, Henry Clarkson, *Daniel Morgan*, and *Ann D.* his wife, late Ann D. Clarkson, Jacqueline Marshall, and Eliza L. S. his wife, late Eliza L. S. Clarkson, *S.* Stribling, and Caroline his wife, late Caroline Clarkson, James W. Wallace, and Judith *Mitchell* his wife, late Judith *Mitchell* Clarkson, Reuben Meridith, and Mary his wife, late Mary Clarkson, children and heirs of Mitchell Clarkson, a devisee of Martin Pickett, deceased, Arthur Slaughter, Martin Slaughter, Augustine Slaughter, Henry H. Field. and Diana his wife, late Diana Slaughter, children of Judith Steploe Slaughter, a devisee of Martin Pickett, Ann Brooks, late Ann Pickett, a devisee of Martin Pickett, deceased, Thomas Arabler, and Lucy H. his wife, late Lucy H. Johnson, Charles Johnson, and Edward Johnson, children of Letitia Johnson, and devisee of Martin Pickett, deceased, and *Martin P. Marshall,* and   his brothers and sisters, children and heirs of Lucy Marshall, late Lucy Pickett, heirs of Martin Pickett, deceased, to appear before the judges of our seventh circuit court of the United States of America, in and for the district of Kentucky, at the Capitol, in Frankfort, on the first Monday in November next, to show cause, if any they can, why the order extending the demise shall not be set aside for error therein, and have then there this writ.

In testimony whereof, John Marshall, esq. Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 5th day of September, 1831, and in the 56th year of our independence.

Attest: JNO. H. HANNA, C. C. C. K. D. [L. S.]

UNITED STATES OF AMERICA,
Seventh Circuit, Kentucky District, } *sct.*

This is to enjoin and restrain Seekright, (i. e.) Martin Pickett, the marshal of the Kentucky district, and all others concerned, from further proceedings on a habere facias which issued from the clerk's office of the seventh circut court United States, Kentucky district, on the 8th of August, 1831, in the name of Timothy Seekright, on demise Martin Pickett vs. William Mitchell, surviving defendant of Wm. Maxwell, for four thousand acres of land, until the further order of this court, as Samuel Legerwood, &c. have obtained a writ of error coram vobis for that purpose, and executed bond, with security, according to law.

Attest: JNO. H. HANNA, C. C. C. K. D.

Marshal's return. Executed on Daniel Morgan and Ann D. his wife, and on Martin P. Marshall, September 27th, 1831, and the remaining defendants not found.

EDWIN C. HICKMAN, D. M., for
JNO. M. McCALLA, M. K. D.

Agreement. And afterwards, to wit, at the November term of the court aforesaid, in the year 1831, came the parties aforesaid, by their attorneys, and it is agreed between the parties that the facts shall be considered as put in issue as well as the law of the case, and the facts shall be submitted to the court instead of a jury, and the court shall be triers of the whole case, subject to an appeal or writ of error by either party.

Whereupon, the cause was submitted to the court in pursuance to said agreement, and was heard and argued by the attorneys for the parties, but the court, not being advised of and concerning the same, took time, &c.

Judgment. And afterwards, to wit, on a subsequent day of the term and year aforesaid, to wit, the November term, 1831, on the 26th day of November, the court being now sufficiently advised of and concerning the premises, do consider that the plaintiff's writ of error coram vobis, be sustained; that the order extending the demise in the declaration of Seekright, on demise of Pickett against Mitchell &c. be set aside, and the haberefacias which issued thereon be quashed, and that the plaintiffs recover of the defendants their costs herein expended.

It is agreed between the parties herein, that the land in controversy in this cause is worth upwards of two thousand dollars.

Bill of exceptions filed. And afterwards, to wit, on a subsequent day of the term and year aforesaid, to wit, the November term. 1831, came the defendants, by their attorney, and filed the following bill of exceptions, (here insert it;) which was signed and sealed by the court, to wit:

Bill of exceptions.

"Be it remembered, that, upon the trial of this writ, the plaintiffs introduced Wm. Rogers as a witness, and the defendant introduced Wm. P. Fleming as a witness to prove his interest in said controversy, who proved that said Rogers held land which was in the possession of Wm. Mitchell and Maxwell at the time they were sued in the original action of ejectment, as witness was informed, but that the greater part of the land held, which was in the possession of Wm. Mitchell, he also holds as assignee of the locator of Pickett's claim, but the court said they would hear him and adjudicate upon his competency upon the final determination of said motion. Said Rogers proved that he saw Mitchell settled upon part of the land in controversy in the year 1798, and, in the same year, he saw John M. Hutchinson, a brother-in-law of Mitchell, seated on another part of said , but whether by sale or as a tenant he did not know; and that Robert Mitchell, a brother of said William, lived upon said tract upon same terms. That, in the year 1817, said Mitchell sold and transferred all his interest in a bond which he held upon Legerwood, for said tract of land, to Thomas Starke, which said bond and assignment was read to the court, and is as follows: (Here insert it.) He also proved that Henderson was the son-in-law of Starke; that he was now in possession of part of the land settled by Hutchinson, and a part in the possession and seated by Wm Mitchell; and that the plaintiff, John Graves, was in the possession of part of the lands seated by Robert Mitchell, and the residue by William Mitchell. He also proved that Wm. Maxwell settled upon the lands now in the possession of Hugh Roseberry; that, upon his death, some of his children sold out his claim to one Patton, who sold to L. K. Bradley, who claimed the land as a tenant in common with James Brown, as assignees of Brooks and Gillispie, and that Bradley sold the same to Moore, who sold the same to Francis Adair; and that the plaintiff, Hugh Roseberry, now holds the same by purchase; and the plaintiffs here read the transfers from Patton to Moore, and from him down to said plaintiff Roseberry, (which is as follows, here insert them.) He stated that the claim of Pickett had been with John Phelps, the locator, and that he held the land, which, in this motion, under Pickett's claim, and held not a foot, to his knowledge, that had been in possession of either William Mitchell or Maxwell, on whom the declaration in ejectment was served. He stated that the Maxwell, as well as Mitchell, held under the adverse patent of Legerwood, but he never saw any bond or writing by which Maxwell claimed.

The plaintiffs next introduced James Houston, who proved the same in substance as the witness Rogers, but stated that William Mitchell and William Maxwell was living on Legerwood's claim in the year 1792, but the extent of Maxwell's claim, beyond his actual enclosures, he never knew; that Maxwell was dead, and his heirs had long since left the State, or was dead. That some of the Maxwells transferred the possession to Paxton, Paxton to Bradley, who placed his son-in-law, Moore, thereon, claiming under his own claim, Moore to Francis Adair, Adair to Wm. Roseberry, and Wm. Roseberry to the present plaintiff, Hugh Roseberry, who had held it about ten years, and it was twenty-one or two years since Bradley took possession. And then they introduced Jamison, who proved substantially, that, in the year 1792, both Hutchinson and William Mitchell, as well as Maxwell, lived on the land in controversy, claiming under Legerwood. The extent of Maxwell's claim he did not know; he agreed with the other witnesses as to the transfers of Maxwell's settlement, down to plaintiff Roseberry. That the farm of Wm. Mitchell, as well as that of Hutchinson, descended to the heirs of Thomas Starke at his death, of which the plaintiff Henderson was one by marriage, and the rest sold to the plaintiff Graves, who now hold part of the Wm. Mitchell tract, and Henderson the other part, and also the farm settled by Hutchinson: neither the witness, or any other, could state the time that Robert Mitchell actually the part held by him. All the witnesses agreed in not being able to state any thing of Maxwell's heirs, and that Wm Mitchell left the land about 1817 or '18, and that he lived near a hundred miles distant. That he was insolvent in his circumstances, and intemperate, and had no interest therein. The only notice given of the application to enlarge the demise was to him, and is as follows: (here insert it;) and none was given to the tertenants.

The defendants then read the record and proceeding in the action of ejectment, and the order of the last May term extending the demise and notice as follows: (Here insert them.) They next read the record and proceedings in the suit in chancery, with injunction in behalf of said Wm. Mitchell vs. said Pickett's devisees, which injunction was obtained in the year 1799, and not decided until the day of May, 1820, after the demise in the declaration of ejectment had expired, (which are as follows: Here insert them.)

The plaintiffs in the motion gave the following additional documentary evidence: the patents to Bradley and Brown; a decree of the Bourbon circuit court in favor of Pickett's devisees or heirs against the heirs of Legerwood; the execution and return on said decree; the deed of the sheriff to Thomas Starke of all Legerwood's claim; the deed from the heirs of Starke to the plaintiff Graves, all which are made part hereof. (Here insert them.)

It was agreed by the parties that the cause should be heard and decided, as by the agreement entered at the present term, to wit: (Here insert it.) Against the writ of error, the defendants contended, 1st, that it embraced law and fact. 2d, That the plaintiffs in error could not sever. 3d, That, as to all the plaintiffs in error, except Mitchell, this writ was erroneously sued. 4th, That the plaintiffs in error, not being parties to the record, could not sue in this court, (the defendants in error.) 5th, The term having elapsed, this court had no power over the proceedings and judgment of the last term; the same being final and conclusive as to Mitchell, of course, at his instance, could not be vacated. 6th, That Henderson, not alleging or showing that he was tertenant of the land recovered of Mitchell, could neither sue the plaintiffs in this court, nor join with others to do so in this writ of error. 7th, Upon the whole case, and the law arising thereon, the court ought not hold jurisdiction, or set aside the order extending the demise at the last term, or grant the relief sought; but the court overruled the causes shown, and alleged by the defendants, and ordered the order extending the lease to be vacated and set aside. To which opinion of the court, in overruling the objections of the defendants, and entering the judgment, except, &c.

The parties agree that the record and proceeding, and papers referred to, need not be given in evidence, but the record may be made out in the same manner as if they were spread out for the Supreme Court.

JOHN BOYLE. [SEAL.]"

UNITED STATES, AND KENTUCKY DISTRICT, *to wit:*

Record in the ejectment case, referred to in bill exceptions.

Timothy Seekright complains of Solomon Spendall, of a plea of trespass and ejectment, for that, whereas, Martin Pickett, a citizen of the State of Virginia, on the first day of Septembe in the year of our Lord, one thousand seven hundred an ninety-six, had demised, granted, and to farm let, unto the said Timothy, and his assigns, a certain messuage and tenement, with the appurtenances, lying and being in the county of Bourbon, and district aforesaid, on the waters of Licking, containing fifty of arable, fifty of meadow and pasture, twenty of orchard, and four thousand acres of woodland, with one dwelling-house, and other out-houses thereon, and other appurtenances, and from the said first day of September, to have and to hold the aforesaid lands and tenements, with its appurtenances, to the full end and term of ten years then next ensuing, and fully to be complete and ended. By virtue of which said demise, the said Timothy entered into the said messuage and tenement, with its appurtenances, and was thereof possessed, and, being so possessed, the said Solomon afterwards, to wit, on the tenth day of September aforesaid, in the year aforesaid, with force and arms, to wit, swords, staves, and knives, entered into the messuage and tenement aforesaid, with its appurtenances, in form aforesaid demised to the said Timothy, his term aforesaid not being yet expired, and ejected, and amoved him from the same, and other wrongs and injuries then and there did to the said Timothy, to his great damage, and against the peace and dignity of the commonwealth, whereby the said Timothy saith he is injured to the value of one hundred pounds, and therefore he brings this suit, &c.

THOMAS TODD, *for Plaintiff.*

Pledges to prosecute, J. Doe and R. Roe.

Messrs. William Maxwell and William Mitchell:

I am informed that you are in possession of, or claim title to the premises mentioned in this declaration of ejectment, or to some part thereof; and I being sued in this action as casual ejector, having no claim or title to the same, do advise you to appear on the first day of the next December dirtrict court of the United States, to be held for the Kentucky district, at Frankfort, by some attorney of that court; and then and there, by a rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

Your friend,

SOLOMON SPENDALL.

October 13, 1796.

Bourbon County, *sct.*

Tarlton Hughes this day came before me, a justice of the peace for the county aforesaid, and made oath, that, on the 12th day of December, 1796, he delivered a true copy of the foregoing declaration and notice to William Maxwell and William Mitchell, who was in possession of the lands therein mentioned, or some part thereof, and told them it was a declaration in ejectment, and that, unless they did appear on the first day of the next district court of the United States, to be held for the Kentucky district at Frankfort, by some attorney of that court, and cause themselves to be made defendan*t* in the room of the casual ejector, judgment would be entered against them by default, and *he* the said would be turned out of possession, or words to that effect.

Given under my hand, this 12th day of December, 1796.

W. MITCHELL.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1796, on the 20th day of December, 1796, it is ordered by the court, and by consent of parties, that Samuel Legerwood be admitted with the said William Mitchell and William Maxwell, defendants in this suit; that they appear to the plaintiff's action, receive a declaration, confess the lease, entry and ouster therein, and plead thereto, and agree to insist on the title only at the trial; and it is further ordered, that if, upon the trial of the issue, a verdict shall be found for the defendants, or the plaintiff shall not further prosecute for any other cause than the not confessing lease, entry, and ouster, that then the lessor of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself doth not pay them. Whereupon, came the defendants, by their attorney, confess the lease, entry and ouster, agree to insist on the title only at the trial, and say that they are in no wise guilty of the trespass and ejectment in the declaration mentioned; and of this they put themselves upon the country, and the plaintiff likewise; therefore let a jury come, &c.

And it is further ordered, that the surveyor of county, do go on the lands in controversy, on the day of next, if fair, if not, then on the next fair day, and then and there survey and lay off the same as either party may direct, having regard to all deeds and other evidence that may be produced, and report all matters of fact specially, and return four fair plats and certificates into the clerk's office of this court.

And the sheriff is ordered to attend the surveyor aforesaid, to remove force, if any should be offered; and further proceedings herein are continued until the next court.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1798, (until which time this cause was continued,) came the plaintiff, by his attorney, and thereupon came also a jury, to wit, Edward Rogers, Richard Terrell, Joshua Barbee, William Rogers, George Blackburn, Stith Daniel, Alexander Macay, Richard Steele, Jonathan Longstreth, James Brown, John Christy, and Robert Smither, who, being elected, tried, and sworn, well and truly to try the issue joined, upon their oaths do say that the defendant is guilty of the trespass and ejectment aforesaid, and they do assess the plaintiff's damage, by occasion thereof, to one penny, besides his costs. It is therefore considered by the court, that the plaintiff recover against the said defendant, his term of, and in the premises aforesaid, with its appurtenances yet to come and unexpired, together with his damages by the jurors in their verdict assessed, and also his costs in this behalf expended; and the said defendant may be taken, &c. And on the motion of the plaintiff, the United States' writ of habere facias possessionem is awarded him to cause him to have possession of his term aforesaid, returnable to the next court.

The following is the habere facias on the foregoing judgment, to wit:

THE UNITED STATES OF AMERICA, *to the Marshal of the Kentucky District, greeting:*

Whereas Martin Pickett, lately, in our district court of the United States, for the Kentucky district, and by the judgment of the same court, recovered against William Maxwell and William Mitchell, his term yet to come of and in one messuage and tenement, with the appurtenances, situate, lying, and being in the county of Bourbon, and district aforesaid, on the waters of Licking, containing fifty acres of arable land, fifty of meadow and pasture, twenty of orchards and four thousand of woodland, with one dwelling house and other out-houses thereon, and other appurtenances, from the first day of September, in the year of our Lord, 1796, to have and to hold the said lands and tenements, with the appurtenances, to the full end and term of ten years, thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said Martin Pickett entered upon the land and tenement, with the appurtenances, and was possessed thereof, until the said William Maxwell and William Mitchell, afterwards, to wit, on the 10th day of September aforesaid, in the year aforesaid, with force and arms entered into the said messuage and tenements aforesaid, with the appurtenances, and him, the said Martin Pickett, from his farm ejected, put out, and amoved, his said term therein not being yet expired, and him so ejected, put out, and amoved, from his possession of his said farm, have withheld, and still do withhold; whereof the said William Maxwell and William Mitchell are convicted, as appears to us of record. Therefore, we command you, that, without delay, you cause the said Martin Pickett to have his possession of his said farm aforesaid, yet to come of and in the lands and tenements aforesaid, with the appurtenances. And how you shall execute this, our writ, make appear on the return, and have then there this writ.

In witness whereof, Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 24th day of December, 1798, and of our independence XXIII.

THOS. TUNSTALL, C. K. D. C. [L. S.]

Marshal's return, to wit:

Execution stopped by virtue of sp'a. chy. obtained by defendants.

SAML. McDOWELL, M. K. D.

The following is the notice given to extend the demise herein, to wit:

Mr. William Mitchell:

Please take notice, that, on the 6th day of the next May term of the United States' circuit court for the seventh circuit and district of Kentucky, I shall move said court to extend the demise upon the judgment in ejectment in behalf of Martin Pickett, deceased, against yourself and William Maxwell, deceased: the judgment was entered at the November term, 1798, and the demise in the declaration in ejectment having expired, the object this motion is to extend the same. The motion will be made by the undersigned, as attorney for said Martin Pickett's devisees, and you may attend if you please.

Yours, &c.

ROBERT WICKLIFFE,
Atto. for M. Pickett's Devisees.

April 28, 1831.

I acknowledge legal service within notice.

WM. MITCHELL.

April 28th, 1831.

Wm. Fleming came into court, and proved that the said William Mitchell signed the said *notice* in his presence. May term, 1831.

Att. JNO. H. HANNA, C. C. C. K. D.

And afterwards, to wit, at a circuit court of the United States, held in the month of May, and year 1831, in the district of Kentucky, on motion of the plaintiff, by his attorney, it is ordered that the demise laid in the plaintiff's declaration be extended to fifty years; and, thereupon, the plaintiff suggested to the court the death of the defendant William Maxwell.

It was proven in open court by William P. Fleming that due notice of this motion was given.

The following are the writs of habere facias which issued after the demise was extended, to wit:

THE UNITED STATES OF AMERICA, *to the Marshal of the Kentucky District, greeting:*

Whereas Timothy Seekright, on the demise of Martin Pickett, in our district court of the United States of America in and for the district of Kentucky, has, by a judgment of the said court, recovered against William Mitchell, surviving defendant of William Maxwell, his term yet to come, and unexpired of, in, and to, one messuage and tenement, with the appurtenances, lying and being in the district of Kentucky, on the waters of Licking, containing fifty acres of arable, fifty of meadow and pasture, twenty of orchards, and four thousand acres of woodland, with one dwelling-house and other out-houses thereon, and other appurtenances. Therefore, we command you, that, without delay, you cause the said Timothy Seekright, on the demise of Martin Pickett, to have possession of land aforesaid, with the appurtenances; and how you shall have executed this writ, return to us on the first Monday in August next.

In testimony whereof, John Marshall, esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 4th day of June, A. D. 1831, and in the 55th year of our independence.

Attest: JNO. H. HANNA, C. C. C. K. D. [L. S.]

THE UNITED STATES OF AMERICA, *to the Marshal of the Kentucky District, greeting:*

Whereas Timothy Seekright, on the demise of Martin Pickett, in our district court of the United States of America in and for the district of Kentucky, has, by a judgment of the said court, recovered against William Mitchell, surviving defendant of William Maxwell, his term yet to come and unexpired of, in, and to, one messuage and tenement, with the appurtenances, lying and being in the district of Kentucky, on the waters of Licking, containing fifty acres of arable, fifty of meadow and pasture, twenty of orchards, and four thousand acres of woodland, with one dwelling-house and other out-houses thereon, and other appurtenances. Therefore, we command you, that, without delay, you cause the said Timothy Seekright, on the demise of Martin Pickett, to have possession of the land aforesaid, with the appurtenances; and how you shall have executed this writ, return to us on the first Monday in November next.

In testimony whereof, John Marshall, esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 8th day of August, A. D. 1831, and in the 56 year of our independence.

Attest, JNO. H. HANNA, C. C. C. K. D. [L. S.]

Marshal's return, to wit:

Stayed by injunction.

EDWIN C. HICKMAN, D. M., for
JNO. M. McCALLA, M. K. D.

Record of the chancery case referred to in the bill of exceptions.

To the honorable Harry Innis, esq., judge of the court of the United States for the Kentucky district, humbly complaining, showeth unto your honor, your orators William Mitchell, James Legerwood, and Samuel Legerwood, that, on the 19th of May, 1780, William Legerwood made an entry on a treasury warrant, with the surveyor of , in the following words and figures, to wit: "May 19th, 1780. William Legerwood enters 1000 acres upon a treasury warrant No. , on a crab orchard, 3 miles east from Harrod's lick, on a branch that runneth in on the south-west side of the first large creek, on the northeast side of said lick," as by an authenticated copy of said entry, herewith exhibited, No. 1, will more fully appear; to which your orators pray leave to refer, and that the same may be taken as part of this bill. Your orators further state, that, on the 12th of December, 1783, the said William Legerwood had the said entry surveyed regularly, and, as they conceive, according to entry, as by an authenticated copy of said survey herewith exhibited, No. 2, and prayed to be taken as part of this bill, will fully appear. Your orators further state that the grant of the State of Virginia was duly obtained by the said William Legerwood, for said land, bearing date the 24th May, 1786, which is also herewith exhibited, No. 3, and prayed to be taken as a part of this bill.

Your orator, William Mitchell, further states that the said William Legerwood, on the 13th day of April, 1793, sold your orator three hundred and fourteen acres of said land, as by the said Legerwood's bond to him therefor, herewith exhibited, No. 4, and prayed to be taken as part of this bill, will more fully appear. Your orators further state that the said William Legerwood departed this life on or about the 28th day of September, 1793, having previously duly made and published his last will and testament, by which, among other devises and bequests, he devised the residue of said tract of land to your orators, James and Samuel, his sons, in the words following, to wit: "All my other lands I give to my son , James and Samuel, to be equally divided between them:" as by an official copy of the said will, taken from the records of Clarke county court, where the same was duly proven and admitted to record, herewith exhibited, No. 5, will now fully appear, to which your orators pray leave to refer, and that the same may be also taken as part of this bill. Your orators further state that, notwithstanding the early period at which the said William Legerwood made said entry, and the specialness of the same, a certain Martin Pickett, on the 9th day of January, 1783, made an entry of 5000 acres on a treasury warrant, No. 10,188, which greatly interferes with the said entry of the said William Legerwood, and, on the 27th of May, 1784, surveyed the same so vaguely and improperly as to include even more of the said William Legerwood's entry and survey than he before improperly included by his said entry, and on the day of 178 , procured the grant of the State of Virginia for said survey, which said grant is of an earlier date than the grant of the said William Legerwood, as by authenticated copies of the said Pickett's said entry, survey, and grant, herewith exhibited, No. 6, 7, and 8, will more fully appear, to which your orators, for greater certainty, pray leave to refer, and that they may be taken as parts of this bill. Your orators further state that the said William Legerwood, under whom they claim as aforesaid, having the best equitable title to the said interference, they well hoped that the said Pickett, who had so surreptitiously and improperly obtained the eldest legal title to the same, would have conveyed to them his right and title thereto, according to their respective interests therein, or at least that he would not disturb them in the possession thereof. But now, so it is, may it please your honor, that the said Pickett, combining and confederating, &c., has lately instituted an action of ejectment in this honorable court against your orator William Mitchell, and a certain William Maxwell, (who is only an intruder on the land, without title, legal or equitable, and who refuses to join in this application to equity,) for to recover possession of said interference, and, at the last court, obtained judgment thereon, on which he has sued forth the United States' writ of habere facias, and will turn your orators out of possession, unless prevented by the interposition of this honorable court; all which actings and doings of the said Pickett, and his confederates, are contrary to equity and good conscience, and tend to the grievious oppression of your orators.

In tender consideration whereof, and for as much as your orators are without remedy by the strict rules of the common law, and only and properly relievable in this honorable court, where fraud is properly cognizable, and specific performance decreed.

To the end, therefore, that the said Pickett may, on his corporal oath, full, true, and perfect answers make to all and singular the premises, &c., and may it please your honor to grant your orators the United States' writ of spa to the said Pickett to be directed, commanding him to be and appear in this honorable court to answer this bill, &c., and to stand to, abide by, fulfil, and perform such decree as your honor shall make in the premises, &c., and a writ of injunction to stay proceedings under said judgment or writ of habere facias until the cause shall be heard in equity. And may it please your honor, the premises being heard and understood, to make the said injunction perpetual, and to decree that the said Pickett convey to your orators, according to their respective interests as aforesaid, so much of the said William Legerwood's said claim as he has so improperly included in his said survey and patent, and such other and further relief in the premises, as to your honor shall seem meet and agreeable to the rules of equity; and your orators will pray, &c.

WM. CLARKE, *for Complainants.*

KENTUCKY DISTRICT, *sct.*

An injunction is granted, agreeable to the prayer of this bill, upon the complainants entering into bond and security in the clerk's office according to law.

HARRY INNES, J. K. D. C.

January 26, 1798.

FRANKLIN, *sct.*

William Mitchell and Samuel Legerwood came before me, a justice of the peace for the said county, and made oath that the contents of this bill, so far as is of their own knowledge, are true; and what they have been informed of from others, they believe to be true. Certified under my hand, this 26 day of January, 1798.

JNO. M. SCOTT.

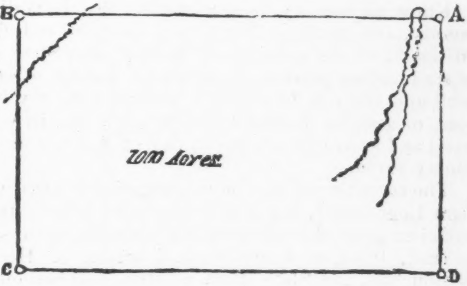
Exhibits referred to in the bill, to wit:

Exhibit No. 1.

May 19, 1780, William Legerwood enters 1000 acres upon a treasury warrant, No. , on a crab orchard, 3 miles east from Harrod's lick, on a branch that runneth in on the southwest side of the first large creek on the northeast side of said lick.

A copy, teste: R. PARKER.

Exhibit No. 2.



Surveyed 12th December, 1783, for William Legerwood, a tract of land containing 1000 acres, by virtue of a treasury warrant No. 2737, entered 20 day of May, 1780, lying on the waters of Hinkston's fork of Licking, on the southwest side thereof, and bounded as follows, to wit: Beginning at two hickories and a hackberry, and running N. 15, W. 500 poles, to a cherry-tree, plumb-tree, and honey-locust; thence S. 75°, W. 320 poles to a buckeye, hickory, and a crab-tree; thence S. 15, E. 500 poles, to two sugar-trees; thence N. 75, E. 320 poles, to the beginning.

VAN SWEARINGEN, D. S.
THOS. MARSHALL, S. F. C.

JNO. HARBERSON, } *C. C.*
WM. LEGERWOOD, }
ROB. MCMILLION, *Pilot.*

A copy, teste: ROB. PARKER, S. F. C.

Exhibit No. 3.

PATRICK HENRY, ESQ., *Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:*

Know ye, that, by virtue and in consideration of a land office treasury warrant, number 2737, issued the nineteenth day of February, one thousand seven hundred and eighty, there is granted by the said commonwealth unto William Legerwood, a certain tract or parcel of land containing one thousand acres, by survey bearing date the 12th day of December, one thousand seven hundred and eighty-three, lying and being in the county of Fayette, on the waters of Hinkston's fork of Licking, on the southwest side thereof, and bounded as followeth, to wit: Beginning at two hickories and hackberry, thence north fifteen degrees, west five hundred poles, to a cherry-tree, plumb-tree, and honey-locust; thence south seventy-five degrees, west three hundred and twenty poles, to a buckeye, hickory, and crab-tree; thence south fifteen degrees, east five hundred poles, to two sugar-trees; thence north seventy-five degrees, east three hundred and twenty poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said William Legerwood, and his heirs, for ever. In witness whereof, the said Patrick Henry, esq., Governor of the commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the twenty-fourth day of May, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth, the tenth.

P. HENRY. [L. S.]

William Legerwood is entitled to the within mentioned tract of land.

JOHN HARVIE, R. L. O. F. F.

Exhibit No. 4.

Know all men by these presents, that I, William Legerwood, of Clarke county, and State of Kentucky, am held and firmly bound unto William Mitchell, of the county of Mercer, and State aforesaid, in the penal sum of six hundred pounds, good lawful money of said State, to which payment well and truly to be made, I bind myself, my heirs, executors, administrators, or assigns, firmly by these presents. In witness whereof, I do set my hand and seal, this thirteenth day of April, one thousand seven hundred and ninety-three.

The condition of the above obligation is such, that, if the above bound William Legerwood, his heirs, executors, administrators or assigns, do make a sufficient general warrantee, in fee simple, to three hundred and fourteen acres of land, lying on *Clere* creek, a branch of Hinkston's fork, in the county of Bourbon, and State above written, and bounded as followeth, to wit: Beginning at a hickory, white-thorn, and buckeye, No, 75, E. 426 poles, to two cherry-trees, a white-thorn and locust; thence S. 15, E. 118 poles, to two buckeyes; thence S. 75, W. 426 poles to an elm, hickory, and mulberry; thence N. 15, W. 118 poles to the beginning; the right to be made on or before the 1st day of December next ensuing the date hereof. Then the above obligation to be void, otherwise to remain in full force and virtue. In witness whereof, I have hereunto set my hand and seal, this day and year first written.

WILLIAM LEGERWOOD. [SEAL.]

Witness present, teste:
SAMUEL LEGERWOOD,
MARGARET LEGERWOOD.

Exhibit No. 5.

In the name of God, amen, I William Legerwood, of the county of Fayette *county*, being perfectly sensible in mind and memory, duly considering the uncertainty of human life, do make this my last will and testament: First, principally, I commend my soul into the hands of my Blessed Maker, trusting in his mercies, and the merits of my dear Redeemer, for the remissions of all my sins, and my body I commit to the earth, to be decently interred. As to my corporal estate, I dispose of it in the following manner: First, I give and bequeath to my dear and well beloved wife, Rebecca, one-third of all my personal estate; also, to hold in possession the tract of land on Howard's creek, on which I now live, during her life; and, after her decease, my will is, that said abovementioned land be divided as follow, (viz.) That my son Samuel shall have my dwelling, and his land adjoining it; likewise, that my daughter Isabella shall have one hundred acres, to include the improvement where she now lives, and to run off the northwest end of said tract; also, that my son Samuel shall lay off one hundred acres of said tract to my daughter Margaret, where he shall think most proper; also, I have give her one mare, which is to be now her property, and she shall have three cows and calves; my daughter Mary, I give her one horse, worth ten pounds; likewise, I give and bequeath to my daughter Rebecca, one horse, worth ten pounds; all my other lands I give to my son , James and Samuel, to be equally divided between them, and as soon as it can be known what the shall obtain of it, the shall sell or dispose of it as the think*s* fit, only they shall buy out of it, if there is as much got of it, one likely negro girl to wait and take care of their mother while she lives, and, if said girl should have any children, the first one to be Margaret's, and her and the rest to be equally divided between my sons James and Samuel. My son Samuel is to have all *iture* and farming tools, not mentioned.

I do hereby *nonimate* and appoint my son , James and Samuel, executors of this my last will and testament, requiring them to pay all my just debts. I declare this to be my last will and testament. In witness whereof, I have hereto set my hand and seal, this seventh day of May, one thousand seven hundred and ninety-two. Signed, sealed, and delivered, by said William Legerwood, to be his last will and testament.

WILLIAM LEDGERWOOD. [SEAL.]

In presence of
Teste: JAMES McMILLION,
R McMILLION,
ALLEN NEALS.

At a court held for Clarke county, January the 28th, 1794, this last will and testament of William Ledgerwood, deceased, was proved according to law, by the oaths of R. McMillion and Allen Neal, two of the witnesses thereto subscribed, and ordered to be recorded. And, on the motion of Samuel Ledgerwood, one of executors therein named, who made oath thereto as the law directs, certificate is granted him for obtaining probate thereof in due form, giving security. Whereupon, he, together with Robert McMillion, Allen Neal, William Hill, his securities, entered into and acknowledged their bond in the penalty of £1000, conditioned as the law directs, for the due and faithful administration of the said decedant's estate and performance of his will, liberty being reserved the other executor therein named to join in the probate when he shall think fit.

Teste: D. BULLOCK, C. C. C.

A copy, teste:

D. BULLOCK, C. C. C.

Exhibits No. 6 and 8 are not among the papers.

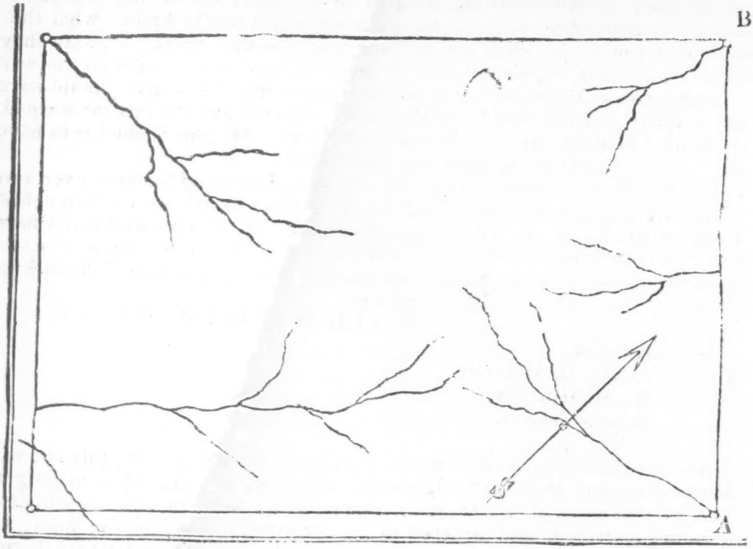


Exhibit No. 7.

Surveyed May 27th, 1784, for Martin Pickett, 5000 acres of land, by virtue of an entry made 9th January, 1783, upon treasury warrant No. 10,188, situate, lying, and being upon a branch of Hinkson's fork of Licking, and is bounded as follows, to wit: Beginning at two ash saplings, growing from one root, with the letter K marked on each of them, and an elm; thence N. 45°, W., crossing several drains and two branches, 800 poles, to two sugar-trees and hickory; thence S. 45°, W. 1000 poles to a hickory-tree and red-oak sapling; thence S. 45°, E. 800 poles, to a hickory, box-elder, and buckeye; thence N. 45°, E. 1000 poles, to the beginning.

JOSHUA BENNETT, S. F. C.

Examined:

THO. MARSHALL, S. F. C.

A copy teste:

ROB. PARKER, S. F. C.

Benedict Coutsman, } *C. C.*
James Beeth,
Jeremiah Power, *Marker.*

Injunction bond, to wit:

Know all men by these presents, that we, William Mitchell and Jonathan Longstreth, and Isaac E. Gano, are held and firmly bound unto Martin Pickett in the just and full sum of five thousand dollars, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 26th day of January, 1799.

The condition of the above obligation is such, that, whereas, the above bound William Mitchell hath this day obtained an injunction to stay all proceedings on a judgment and execution obtained against him and William Maxwell at common law.

Now, so it is, if the said William Mitchell shall prosecute the said injunction with effect, and in case the said injunction shall be dissolved or dismissed, or the said William Mitchell shall well and truly pay, or cause to be paid unto the said Martin Pickett, his heirs, executors, and administrators, the sum of three thousand three hundred and thirty-three dollars and thirty-three and a third cents; and, also, all costs and damages which may be awarded against him in consequence of suing out the said injunction, then this obligation to be void, otherwise to remain in full force.

WILL. MITCHELL. [SEAL.]
JONA. LONGSTRETH. [SEAL.]
ISAAC E. GANO. [SEAL.]

Teste: THO. TUNSTALL.

Chancery subpœna, to wit:

THE UNITED STATES OF AMERICA, *to the Marshal of the Kentucky District, greeting:*

You are hereby commanded to summon Martin Pickett to appear before the judge of the district court, at the Capitol, in Frankfort, on the second Monday in March next, to answer a bill in chancery exhibited against him by William Mitchell, James Legerwood, and Samuel Legerwood; and this they shall in no wise omit under the penalty of £100 each, and have then there this writ. In testimony whereof, Harry Innes, esq., judge of our said court, hath caused the seal thereof to be hereunto affixed, this 26th day of January, 1799, and of our independence the XXIII.

Attest: THO. TUNSTALL, C. K. D. C. [L. S.]

Note.—All proceedings had and obtained at common law are hereby enjoined and stayed until the matter can be heard in equity.

T. TUNSTALL.

I admit the service of the within spa., as attorney in fact for the within named Martin Pickett.

A. K. MARSHALL.

WASHINGTON, 1*st March*, 1799.

Executed on the attorney in fact.

J. McDOWELL, D. M., for
L. McDOWELL, M.

And afterwards, to wit: On the 6th day of November, in the year 1800, came the defendant, Martin Pickett, by his attorney, into the clerk's office of the court aforesaid, and filed the following answer to the complainant's bill herein, to wit:

The answer in chancery of Martin Pickett, gent., to the bill of complaint exhibited against him before the honorable district court of the United States for the Kentucky district, by William Mitchell, James Legerwood, and Samuel Legerwood. This respondent, now and at all times saving and reserving to himself all manner of benefit of exception to the uncertainties, misrepresentations, and untruths, in the complainants' bill contained, for a full, true, and perfect answer thereto, or to so much thereof as he is advised it is any way material for him to answer unto, he, answering, saith:

This respondent having, himself, never been in the State of Kentucky, consequently, cannot be acquainted personally with the lands or circumstances detailed by the complainant, nor hath he any knowledge of the claim of the complainants' either in law or equity, but leaves it to them to prove, if it is necessary. He admits having purchased land warrants which were sent to the district of Kentucky to be located and surveyed, one of which may have been located and surveyed, including the land mentioned in the complainants' bill, and that a patent hath been obtained. He, further answering, saith he hath been informed, and doth verily believe, that the location under which he claims was made in so special a manner as to admit of no difficulty in ascertaining the land it intended to cover, and that the survey was executed in strict conformity thereto. He denies having, until long since obtaining his grant, having any knowledge of the claim of the complainants, and then only by information from which he was induced to believe that the lands claimed by them, included within his grant, if derived from an entry older than his, would still not give them a priority of title, as the survey made, and under which they claim, was not made pursuant to their entry, and, consequently, did not include the lands intended to be covered thereby. This respondent admits having given directions to his attorney in fact, residing in the State of Kentucky, to investigate the claims interfering with his grant, and to take the proper measures to dispossess those whose titles was of an inferior order to this respondent's; and he has understood that ejectments have been brought, and judgments at law obtained, and is willing to admit that the complainants' case is one of them. He refers this honorable court to a copy of his location, survey and patent, which he prays may be received as a part of this answer, to prove that his location was a special one, and the survey made conformably to it. He denies all manner of unlawful combination in the premises, and prays to have the benefit of his judgment obtained at law, and that he be hence dismissed, with his costs in this behalf most wrongfully sustained, &c.

MARTIN PICKETT.

VIRGINIA, FAUQUIER COUNTY, *to wit:*

This day, Martin Pickett, gent., appeared personally before me, and made oath that all the matters and things in this answer contained, so far as they come within his own knowledge, are true; and those things that are set forth to be within the knowledge of others, he believes to be true. Given under my hand and seal, this 17th day of September, 1800.

THOMAS CHILTON. [SEAL.]

VIRGINIA, FAUQUIER COUNTY, *to wit:*

I, Fran[illegible]s Brooke, clerk of the said county of Fauquier, do hereby certify that Thomas Chilton, gent., the person before whom the within answer was sworn to, is an acting magistrate for the county aforesaid, and that full faith and credit is due to all matters and things by him so attested, as well in courts of justice as thereout.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, this 17th day of September, 1800.

F. BROOKE, C. F. C. [L. S.]

Virginia, Fauquier County, *to wit:*

I, William Edmonds, presiding justice of the county court of Fauquier, in Virginia, do hereby certify that the above testimonial, made by Francis Brooke, clerk of the said court, is in due form of law. Given under my hand and seal, this 17th day of September, 1800.

W. EDMONDS. [seal.]

"The survey of Martin Pickett, referred to in the foregoing answer, has already been inserted. The entry and patent are not among the papers of this chancery cause, as before stated."

And afterwards, to wit: At a district court of the United States of America in and for the district of Kentucky, held at the Capitol, in the town of Frankfort, at the November term, in the year 1801, (until which time this cause was continued,) on motion, and by consent of the parties by their attorneys, it is ordered that the surveyor of Bourbon county do go on the land in controversy between the parties, on the day of next, if fair, if not, on the next fair day, and then and there survey and lay off the same as either party may direct, having regard to all deeds and other evidence that may be produced; report all matters of fact specially, and return four fair plats and certificates thereof into the clerk's office of this court, thirty days at least before the day of trial; and the sheriff of the said county is directed to attend the said surveyor to remove force, should any be offered; and further proceedings are continued till the next court.

And afterwards, to wit: At the November term of the court last aforesaid, in the year 1802, (until which time this cause was continued,) on motion, and by consent of the parties, it is ordered that the foregoing suit be referred to the arbitrament and final determination of James Hughes and William Steele, and their umpire, in case of disagreement, and their award to be made the decree of the court; and further proceedings continued until the next court.

And afterwards, to wit: At the April term of the court aforesaid, in the year 1804, (until which time this cause was continued for an award,) on motion, it is ordered, that a summons issue against James Hughes and William Steele, who were appointed arbitrators in this cause at the November term, 1802, to show cause, if any they can, why they have not made up and returned an answer herein agreeably to the said order, returnable to the third day of the next term.

And afterwards, to wit: At the November term of the court aforesaid, in the year 1804, (until which time this cause was continued,) came the parties aforesaid, by their attorneys, and it appearing to the court that the defendant has departed this life, it is therefore ordered that this suit do abate; and, on the motion of the complainant, by *his* counsel, it is ordered that the order of reference, made herein, be set aside; and it is further ordered, that this cause be revived against Charles Marshall and Lucy his wife, late Lucy Pickett, Francis Brook, and Nancy his wife, late Nancy Pickett, William Clarkson, and Milly his wife, late Milly Pickett, Staunton Slaughter, and Judy his wife, late Judy Pickett, George Picket, and Elizabeth Pickett, and Steploe Pickett, who are infants under the age of twenty-one years, children and heirs-at-law of Martin Pickett, deceased; and, it appearing satisfactorily to the court that the said defendants are not inhabitants of this State, it is therefore ordered that they do severally appear here on the first day of the next

March term, and show cause, if any they have, why the complainants' bill against them should not be taken for confessed; and that a copy of this order be inserted in the Palladium or Guardian of Freedom for twelve weeks successively.

And afterwards, to wit: At the March term of the court last aforesaid, in the year 1806, (until which time this cause was continued,) on motion of the complainants, by their counsel, it is ordered that John Boyd, of Bourbon county, do go on the land in controversy between the parties, on the day of next, if fair, if not, on the next fair day, and then and there survey and lay off the same as either party shall direct, having regard to all deeds and other evidence that may be produced, report all matters of fact specially, and return four fair plats and certificates thereof into the clerk's office of this court, thirty days at least before the day of trial; and the marshal, or one of his deputies, is directed to attend the said Boyd, to remove should any be offered. And leave is given either party to take depositions, in or out of the State, before any two justices of the peace, by giving reasonable notice of the time and place of taking said depositions.

And afterwards, to wit: At the July term of the court last aforesaid, in the year 1806, (until which time this cause was continued,) came the complainants aforesaid, by their counsel; and the defendants being solemnly called, came not, but made default; thereupon, came a jury, to wit: Nicholas Lafon, John Kinton, John Younger, Nathaniel Cox, Hubbard Taylor, Robert Branham, Francis Peart, John P. Thomas, Thomas Bryan, Edward Blackburn, George Blackburn, and William Hampton, who, being elected, tried, and sworn, well and truly to inquire of such facts as might be submitted to them, do, upon their oaths, *do* find the following, to wit:

1st. "That the place designated on the connected plat by the letters H. L., was known by the name of Harrod's lick at and long before the date of the entry of William Legerwood, under which the complainant claims in this suit.

2d. That the plumb or crab orchard described and referred to by the surveyor on the connected plat, the center of which is near the letter S, at Busby's spring, on the said plat, and extending from thence up and down the branch from 120 to 150 poles in each direction, was called and known by those persons who were conversant with that neighboreood at and before the date of the said Legerwood's entry, by the name of the Crab-orchard, and the Plumb-orchard, indiscriminately; and from the great and unusual growth of crab-apple, as well as of plumb-trees, might have been well described, and easily found, by either of those names.

3d. That the stream on which the said crab or plumb orchard is situated, is the first creek or stream to be met with in travelling from the said Harrod's lick a northeastwardly course towards the said crab-orchard.

4th. That there was no other place, at the date of the said entry, within five miles of the said crab or plumb-orchard, or near the course and distance from Harrod's lick, which is called for in the said entry, which had received the appellation, or which could, with propriety, be called a crab-orchard.

5th. That the surveys, water courses, and other objects laid down on the connected plat, are correctly represented thereon, as they actually exist on the ground.

6th. That such entry and survey was made for William Legerwood, as is stated in the bill of which attested copies are annexed: the entry 1, the survey 2.

7th. The patent, of which an attested copy, marked 3, is annexed, was issued to the said Legerwood.

8th. That the bond annexed, marked 4, was executed by the said William Legerwood to the complainant William Mitchell.

9th. That the said William Legerwood has departed this life, having made and published his last will and testament in writing, an attested copy of which is annexed, marked 5."

And afterwards, to wit: On a subsequent day of the term and year last aforesaid, to wit, the July term, 1806, came the plaintiffs, by their counsel, and it appearing to the satisfaction of the court, that the defendant hath departed this life, it is, therefore, ordered that this suit abate by the said defendant's death.

And on the motion of the complainants, by their counsel, leave is given them to file their bill of revivor against Charles Marshall, and Lucy his wife, late Lucy Pickett, Francis Brooke, and Nancy his wife, late Nancy Pickett, William Clarkson, and Milly his wife, late Milly Pickett, Staunton Slaughter, and Judy his wife, late Judy Pickett, George Pickett, and Elizabeth Pickett, and Steploe Pickett, who are infants under the age of twenty-one years, children and heirs-at-law of him, the said decedent.

And that Thomas Tunstall, clerk of this court, be appointed guardian to the infant heirs at law of the said decedant, for the special purpose of defending this suit.

And it is further ordered, that the depositions and the connected plat, and the facts found by the jury in the cause, be set aside.

And it is ordered that John Boyd, of Bourbon county, do go on the lands in controversy between the parties, on the day of next, if fair, if not, on the next fair day, and then and there survey and lay off the same as either party may direct, having due regard to all deeds and other evidence which may be produced; report all matters of fact specially, and return four fair plats and certificates thereof into the clerk's office of this court, thirty days at least before the day of trial; and the marshal, or one of his deputies, is directed to attend the said surveyor, to remove force, should any be offered.

And it is ordered, that either party have leave to take depositions generally, in or out of this State, before any two justices of the peace, either party giving to the other reasonable notice of the time and place of the taking said depositions.

And afterwards, to wit: On a subsequent day of the term and year last aforesaid, to wit, the November term, 1806, came the complainants, by their counsel, and it appearing that the defendant, Charles Marshall, hath departed this life, it is therefore ordered that this suit abate as to him.

And it appearing to the satisfaction of the court, that due publication of the notice of the taking of the depositions and making the surveys filed in this cause, have been inserted in a newspaper, styled the Palladium, for four weeks successively, as prescribed by the rules of this court.

And Joseph H. Daviess, esq., appeared as counsel for the defendants, and agrees to waive all exceptions to the report of the surveyor not having been returned into the clerk's office of this court in the time prescribed by the rule of this court, provided that the appearance is not to prejudice the defendants in this suit, in this or in any other court

Whereupon, came also, a jury, to wit: Martin McFarren, James Kennon, Joseph Craig, John Eakin, James Coleman, John Helm, Hubbard Taylor, John Dupuy, Wm. Ware, Herman Bowmar, George Clarke, and Edmund

Bacon, who, being elected, tried, and sworn, well and truly to inquire of such facts as might be submitted to them in this cause, upon their oaths, do find the following, to wit:

"1st. We of the jury, do find that the place designated on the connected plat by the letters H. L., was known by the name of Harrod's lick at and long before the date of the entry of William Legerwood, under which the complainants claim in this suit.

2d. That the plumb or crab-orchard, described and referred to by the surveyor in the connected plat, the centre of which is near the letter S, at Busby's spring, on the said plat, and extending from thence up and down the branch, from 120 to 150 poles in each direction, was called and known by those persons who were conversant with that neighborhood at and before the date of the said Legerwood's entry, by the name of the Crab-orchard and the Plumb-orchard, indiscriminately; and from the great and unusual growth of crab-apples, as well as plumb-trees, might have been well described and easily found, by either of those names.

3d. That the stream on which the said crab or plumb-orchard is situated is the first creek or stream to be met with in travelling from the said Harrod's lick a northeastwardly course towards the said crab-orchard.

4th. That there was no other place at the date of the said entry, within five miles of the said crab or plumb-orchard, or near the course and distance from Harrod's lick, which is called for in the said entry, which has received the appellation, or which could, with propriety, be called a crab-orchard.

5th. That the surveys, water courses, and other objects laid down on the connected plat, are correctly represented thereon, as they actually exist on the ground.

6th. That such entry and survey was made for William Legerwood, as is stated in the bill, of which attested copies are annexed, marked the entry 1, the survey 2.

7th. That the patent, of which an attested copy, marked 3, is annexed, was issued to the said Legerwood.

8th. That the bond annexed, marked 4, was executed by the said William Legerwood to the complainant William Mitchell.

9th. That the said William Legerwood hath departed this life, having made and published his last will and testament in writing, an attested copy of which is annexed, marked 5.

We, of the jury, find for the complainants the foregoing facts.

JOS. CRAIG, *Foreman.*"

And afterwards, to wit: On a subsequent day of the term and year last aforesaid, to wit, the November term, 1806, came the complainants aforesaid, by their counsel, and submitted to the court the papers in this cause without argument.

And afterwards, to wit: On a subsequent day of the term and year last aforesaid, to wit, the November term, 1806, came the complainants aforesaid, by their counsel, and the court being now sufficiently advised of and concerning the premises, and mature deliberation being thereon had, it is therefore ordered that the complainants' bill be dismissed, and that the defendants recover against the said complainants their costs by them in this behalf expended; and the complainants in mercy, &c.

And afterwards, to wit: On a subsequent day of the term and year last aforesaid, to wit, the November term, 1806, came the complainants aforesaid, by their counsel, and, on his motion, it is ordered, that the decree of the dismission pronounced herein, at a former day of this term, be set aside, and this cause to be continued, until the next court, for argument.

And afterwards, to wit: At a circuit court of the United States held in and for the district of Kentucky, at the Capitol, in the town of Frankfort, at the November term thereof, in the year 1807, (until which time this cause was continued,) it is ordered by the court that the facts found in this cause, by the jury, be set aside.

On motion, leave is given either party to take depositions generally, in or out of this district, before any two justices of the peace, either party giving to the other reasonable notice of the time and place of taking the same; and further proceedings herein are continued until the next court.

And afterwards, to wit: At the November term of the court last aforesaid, in the year 1808, (until which time this cause was continued,) came the complainant aforesaid, by *his* counsel, and on his motion it is ordered that he have leave to take depositions generally, in or out of this district, before any two justices of the peace, upon giving legal notice to the defendants of the time and place of taking the same.

And afterwards, to wit: At the November term of the court aforesaid, in the year 1815, (until which time this cause was continued,) came the defendants aforesaid, by their counsel, and the complainants failing further to prosecute this suit, it is ordered that the same be dismissed, and that the defendants recover of the complainants their costs herein expended.

And afterwards, to wit: On a subsequent day of the term and year last aforesaid, to wit, the November term, 1815, on motion of the defendant's counsel, it is ordered that this cause be reinstated.

"The following is the bill of revivor filed in the case of Mitchell, &c. vs. Pickett's heirs, which was filed at the July term, 1806."

To the honorable the judges of the district court of the United States for the Kentucky district, sitting in chancery, respectfully shows to your honor, your orators William Mitchell, Wm. Legerwood and Samuel Legerwood, that your orators formerly filed their original bill in chancery in this honorable court, stating that your orators claim 1000 acres of land on the waters of Hinkston, in the county of Bourbon, under an entry on treasury warrant, made in the name of Legerwood, deceased; your orator, Wm. Mitchell, under a bond from the said Legerwood and your orators Samuel and Wm. Legerwood, under the will of the said decedent. That Martin Pickett, a citizen of Virginia, who was made defendant to the said bill, claimed a part of the land included in the survey and patent made on the said entry of the said Ledgerwood, by virtue of an entry, survey, and patent, in the name of him, the said Pickett, and praying that a decree might be pronounced in your orators' favor against him, the said defendant, for so much of the land contained in the defendant's patent as was likewise included in the entry, survey, and patent, of him, the said Legerwood. That this suit progressed so far that the defendant, Pickett, having filed his answer to your orators' said bill, the same was set down for hearing agreeably to the rules and practice of this honorable court, when the said Martin Pickett departed this life, in the State of Virginia, intestate, leaving citizens of Virginia, his children and heirs at law, in whom the legal title became vested by the law of descents. Your orators therefore pray that the said suit may be, and stand revived against them, the said children and heirs at law of him, the said decedent; and that your orators may receive such decree in the premises as shall be meted to the equity of *his* case, and be agreeable to the prayer of *his* said original bill.

I. TALBOT, *for Compl'ts.*

Know all men by these presents, that I, William Ledgerwood, of Clarke county, and State of Kentucky, am held and firmly bound unto William Mitchell, of the county of Mercer, and State aforesaid, in the penal sum of six hundred pounds, good and lawful money of said State, to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators or assigns, firmly by these presents. In witness whereof, I do set my hand and seal, this 13th day of April, 1793.

The condition of the above obligation is such, that, if the above bound William Ledgerwood, his heirs, executors, administrators, or assigns, do make a sufficient general warranty in fee simple to 314 acres of land, lying on *Clere* creek, a branch of Hingston's fork, in the county of Bourbon, and State above written, and bounded as followeth, to wit: Beginning at a hickory, white-thorn and buckeye; thence N. 75, E. 426 poles, to two cherry-trees, a white-thorn and locust; thence S. 15, E. 118 poles, to two buckeyes; thence S. 75, W. 426 poles, to an elm, hickory, and mulberry; thence N. 15, W. 118 poles, to the beginning. The title to be made on or before the first day of December next, ensuing the date hereof; then the above obligation to be void, otherwise to remain in full force and virtue. In witness whereof, I have hereunto set my hand and seal, this day and year first written.

WILLIAM LEDGERWOOD. [SEAL.]

Witness present:
Teste: SAMUEL LEDGERWOOD,
MARGARET LEDGERWOOD.
A copy, teste: JNO. H. HANNA, C. C. C. K. D.

Assignment on the back of above bond, to wit:

For value received, I, William Mitchell, do assign the within bond, which is a copy of the original now on file in the court of the United States for the district of Kentucky, to Thomas Starke, sen.; except such parts of the land therein described, as have been heretofore disposed of by me, and do hereby fully vest the said Starke with all the right of entry into, and possessing of said land, in the same way and manner that I might or could enter into, and possess the same; and do further vest said Starke with all the right of possession to the lands within described, with the above exception, that I am entitled to; and do further agree and bind myself to make to said Starke a similar assignment to this on the original bond, of which this is a copy, whenever he may require me so to do. Witness my hand and seal, this 6th day of July, 1819.

WM. MITCHELL. [SEAL.]

Teste: W. ROGERS.

To Charles Marshall and Lucy his wife, late Lucy Pickett, Thos. Brooke and Nancy his wife, late Nancy Pickett, Wm. Clarkson and Milly his wife, late Milly Pickett, Staunton Slaughter and Judy his wife, late Judy Pickett, George Pickett, and Eelizabeth Pickett, and Steploe Pickett, children and heirs at law of Martin Pickett, deceased.

Take notice, that we will, on the 3d day of October next, meet at the house of Robert Busby, in the county of Bourbon, at the hour of ten o'clock in morning, and proceed from day to day, (if necessary,) to take the deposition of and others, to be read as evidence in a suit in chancery depending in the district court of the United States for the Kentucky district, wherein we are complainants, and you, as heirs at law as aforesaid, are defendants; and that we shall likewise assemble at the same time and place, with the proper surveyor, for the purpose of executing an order of survey made by the said court, to be read as evidence in the trial of the said suit.

Yours,

WILLIAM MITCHELL,
WILLIAM MAXWELL, and
SAMUEL LEDGERWOOD.

September 3, 1806.

I hereby acknowledge service of the within notice, as guardian to the infant heirs of Martin Pickett, deceased.

THO. TUNSTALL.

September 3, 1806.

BOURBON COUNTY, *to wit, June 2d,* 1806.

By virtue of an order of the United States' court for the district of Kentucky, to me directed, in a suit in chancery therein depending, wherein William Mitchell is complainant, and Martin Pickett, &c. defendants, then surveyed and laid down for the said complainant as above described. Given under my hand.

JOHN BOYD.

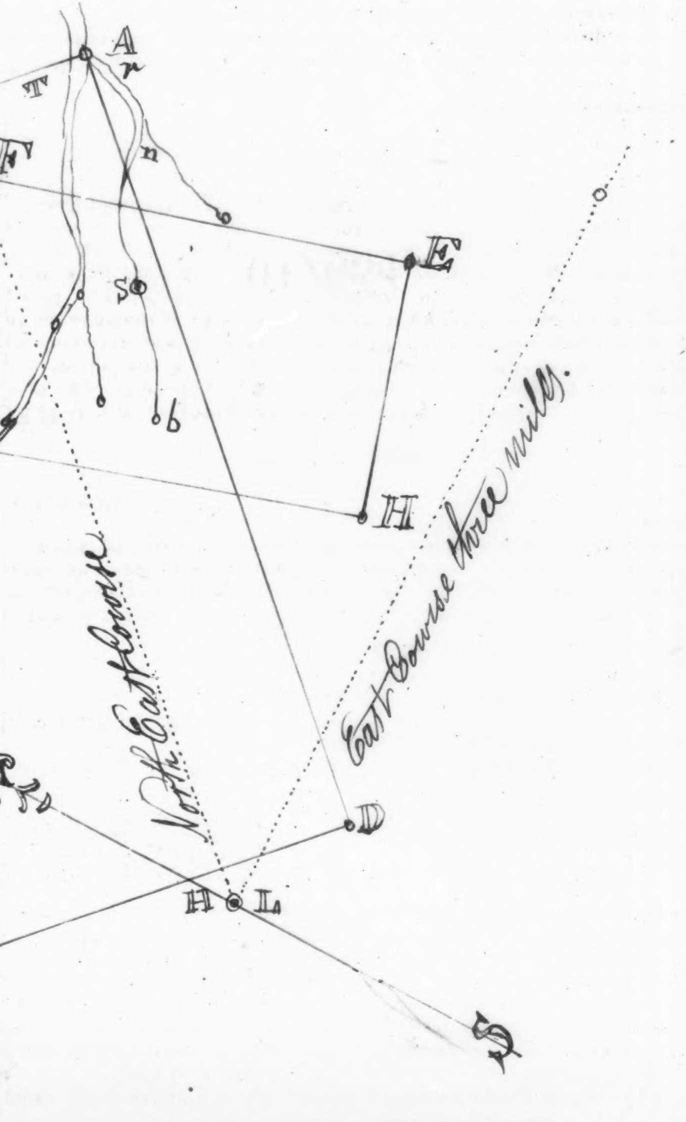
Explanatory Notes.

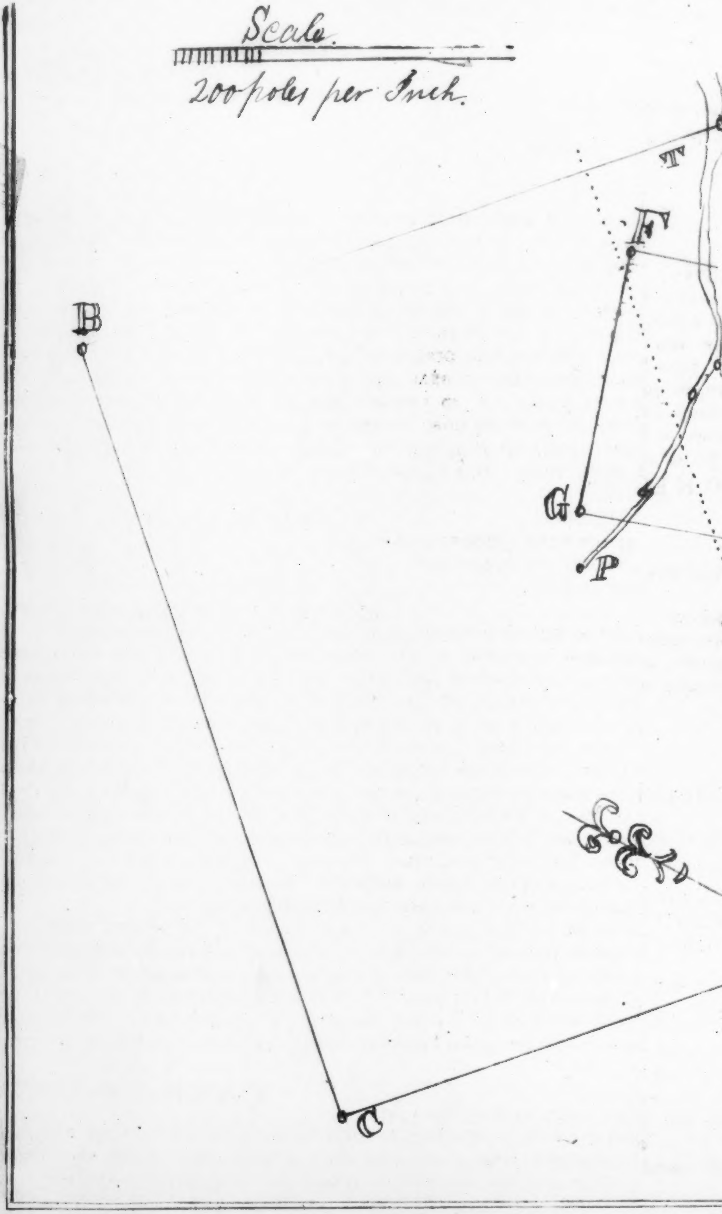
A B C D A, Martin Pickett's 5000 acres as surveyed; E F G H E, Wm. Legerwood's 1000 acres as surveyed; H. ● L., Harrod's lick; w n, Geo. Wilson's branch from the head to the mouth; b s n r, the branch on which, or adjoining to which, the Crab or Plum-orchard lies, and extends up and down the same, and as far north as the corner at F, as shown to me this day by Robt. McMillan, Andw. Rogers, and Charles McNarey. That part of said branch which runs above ground is marked with black lines, and where it sinks it is marked with yellow lines; S ⊙, Maxwell's spring, where Robt. Busby now lives, and where the depositions in this suit were taken to-day; P ⊙ ○ T, the first large branch or creek northeast of Harrod's lick.

Depositions filed in the case.

BOURBON COUNTY, *to wit:*

The depositions of certain witnesses taken at the house of Robert Busby, in said county, on the 3d day of October, 1806, to be read as evidence in a suit depending in the United States' district court in and for the State of Kentucky, in which Samuel Ledgerwood, Wm. Mitchell, and Wm. Maxwell, sen., are complainants, and the heirs of Martin Pickett, deceased, is defendants. Said witnesses, to wit: Robert McMillin, Isaac Clinkinbeard, William Clinkinbeard, Joshua Stamper, James Duncan, Benedict Couch-


A
r
T
F
n
E
S
b
H
North East course
East Course three miles.
D
H
L
S


Scale.
200 poles per Inch.
B
C
F
G
P
T

man, Charles McNary, Malchi Couchman, and Patrick Jordan, being of lawful age, and first duly sworn, deposeth and saith: First, Robert McMillan deposeth and saith that he was at this place in the year 1775; that he markand improved the land at or near the spring where Wm. Maxwell, jr. formerly lived, (being the place where Robert Busby now lives,) and at which we now are; that he gave Wm. Ledgerwood a written direction how to make an entry upon said spring or land; that he came with the surveyor to the land, showed the land, and directed the surveyor how to run said land; that he called the place a crab-orchard in the written direction given by him to said Legerwood; and, further, that he heard the said place frequently called a crab-orchard by others, at that time and since.

Question by Wm. Mitchell. How long is it since you first heard the place called a crab-orchard?

Answer. Ever since the year 1776.

Question by same. Where was the greater part of the orchard situated, with respect to the spring and improvement?

Answer. Up and down the branch, above and below the spring; but the greater part lay on the west, or northwest side of the branch.

Question by same. Were you not generally acquainted with this part of the country at that time and since?

Answer. Yes.

Question by same. Did you ever hear of, or know any other place, in in this part of the country, called or known by the name of the Craborchard, besides this place?

Answer. Not that I recollect.

Question by same. How did you obtain a knowledge of the course and distance from this place to Harrod's lick?

Answer. When I made the improvement, I intended to make an entry on the land when an office would be opened, and, in order to enable me to find the place again, my brother being with me, we steered a certain course from the spring in order to strike some notorious place, by which we might find the improvement, and strike at or near Harrod's lick. My brother steered the course with a pocket compass, and I stepped the ground after him, by which we computed the distance to be three miles.

Question by W. Mitchell. Which did you think, the crab or plum-trees, the most numerous in said orchard?

Answer. In the fall, 1775, there were the greatest appearance of crabs on the ground, which induced me to call it a crab orchard, but whether the crab-trees or plum-trees were most numerous, I cannot say.

Question by same. Is not the creek on which this orchard is situated, the first creek of notoriety on the northeast side of Harrod's lick?

Answer. I always thought it so.

Question by same. Did not this orchard extend from this place to the corner you, June 2d last, showed John Boyd, the surveyor?

Answer. It did.

Question by same. How far up the branch, above this place, did this orchard extend?

Answer. I think one hundred and twenty or thirty poles.

Question by same. What proportion of this orchard lay on each side of this branch, paying regard to the general course of said branch?

Answer. I think three-fourth's of it lay on the northwest side of said branch.

Question by same. How much, or what quantity of land did this orchard occupy?

Answer. I always thought, in early times, that there was about five or six hundred acres in it.

Question by same. Are you not well acquainted with the expressions of Legerwood's entry?

Answer. I am.

Question by same. Do you think any subsequent locator could have been at any loss, (seeing said Legerwood's entry,) in guarding against this place, as being appropriated by said entry?

Answer. I think, from the expressions of Legerwood's entry, and the notoriety of this orchard, no person could have been at any loss in supposing this to be the place appropriated by Legerwood's entry aforesaid. I am sure I should have been at none. And further saith

R. McMILLIN.

Also, Malachi Couchman, of lawful and first duly sworn, deposeth and saith, that he hath lived in the neighborhood, and near to this place, for about 15 or 16 years, or upwards, before any improvements were made in bounds of what is now called the crab or plum-orchard.

Question by Wm. Mitchell. What name did this orchard generally bear at the time, and since you first became acquainted with it?

Answer. I have frequently heard it called by both aforesaid names.

Question by same. Did you ever hear of this orchard before you became acquainted with it yourself?

Answer. I have frequently heard of a notorious crab or plum-orchard on the water course; that, since my acquaintance with this orchard, I am satisfied it is the same I have frequently heard of before I saw it.

Question by same. Did you ever hear or know of any other crab or plum-orchard within 6, 8, or 10 miles of this place, except the one we are now at?

Answer. I never did. And further saith not.

MALCHI COUCHMAN.

Also, Wm. Clinkinbeard deposeth and saith, that he became acquainted with this place in 1780, and that he always heard it called by the name of a plum-orchard.

Question by Wm. Mitchell. Did you not also observe a great number of crab-trees in this orchard at that time?

Answer. Yes.

Question by same. Was not this a very remarkable place for both crab-trees and plum-trees?

Answer. Yes, but I thought the plum-trees the most numerous.

Question by same. Did you ever hear of, or know any other place in this part of the country that was called or known by the name of either a crab-orchard or plum-orchard, except this place?

Answer. No.

Question by same. Did you ever hear of, or know any crab or plum-orchard within eight or ten miles of this place, except the one we now are at?

Answer. No; I know of none but a small one at the mouth of Pretty run, which was about 5 or 6 miles from this place, which was not of equal notoriety; neither was it on this direction from Harrod's lick, but on the other side of said lick.

Question by same. Is not the creek on which the crab-orchard is situated, where we now are, the first creek of notoriety on the northeast side of Harrod's lick, and was it not so considered at your first acquaintance with it?

Answer. Yes.

Question by same. What distance do you suppose this orchard extended up and down this branch, from the place we are now at?

Answer. I think it might be a quarter of a mile (or better) up the branch, but I do not think it quite so far down.

Question by same. Where did the greatest proportion of this orchard lie from this place, with regard to the general course of this branch?

Answer. The greatest proportion lay on the northwest side.

Question by same. Was it not common for different companies, at that time, to call creeks, roads, &c. by different names?

Answer. Yes. And further saith not.

his
WILLIAM × CLENKINBEARD.
mark.

Also, the deposition of James Duncan, of lawful age, and being duly sworn, deposeth and saith that, some time in the fall of the year, 1782, he became acquainted with the place we are now at; which place was then called the Plum-orchard, or at least known to me by that name, and I have known it by that name ever since.

Question by Wm. Mitchell. How did you first obtain a knowledge of this place by that name?

Answer. By the hunters at Strode's station, who, I believe, all knew it by that name.

Question by same. Did you ever know or hear of either a plum or crab-orchard within eight or ten miles of this place, at that time, as being a place of notoriety, except the one we are now at?

Answer. I did not.

Question by same. Is not this crab or plum-orchard situated on the first creek of notoriety on the northeast side of Harrod's lick?

Answer. It is.

Question by same. Was there not a great quantity of crab-trees in said orchard when you first became acquainted with it?

Answer. There was.

Question by same. How far do you suppose this orchard extended up and down this branch, from the place we are now at?

Answer. I think about a quarter of a mile each way, though a very large proportion of it lay on the northwest side of said branch.

Question by same. Were not creeks, roads, traces, &c. called by different names by different companies, at that time?

Answer. Yes, they were. And further this deponent saith not.

J. DUNCAN.

Andrew Rogers, of lawful age, and being first duly sworn, deposeth and saith, that he became acquainted with this place 14 or 15 years ago, before any improvements were made in the orchard alluded to in the foregoing depositions, and that it then was a very remarkable place for both crab and plum-trees; the most so of any place he ever saw.

Question by Wm. Mitchell. How near is the spring at which we now are, to the center of the orchard alluded to, as you suppose?

Answer. It extended about 150 poles up the branch, and perhaps as far down, but the greatest part of it lay northward from the spring.

Question by same. From your acquaintance with this place, which do you think were most numerous, the crab-trees or plum?

Answer. In some places the crab-trees were the most numerous, and, in other places, the plum-trees, but in general they were mixed all over the orchard.

Question by same. Does not said orchard extend from this place to the corner shown by you to John Boyd, the surveyor, the 2d of June last?

Answer. Yes, and extended from that corner westward along the north line about 180 poles, and nearly as far along the east line southward; and further *this deponent* saith not.

Question by same. Was it not common in early times, in this country, for different companies to call creeks, roads, &c. by different names?

Answer. I have been acquainted with country ever since the year 1779, and have frequently found that the case.

ANDW. RODGERS.

The foregoing deposition of Andrew Rodgers was taken before us at the house of Robert Bysby, this 4th day of October, 1806. Given under our hands and seals.

SAML. DONNELL. [SEAL.]
JOHN BOYD. [SEAL.]

Isaac Clinkinbeard, deposeth and saith that he was acquainted with this place in the fall of the year, 1780, and then knew it by the name of Plum-orchard, and which was the name generally given to it by the people at Strode's station.

Question by Mr. Mitchell. Was there not a great appearance of crab-trees, as well as plum-trees, in this orchard, at that time?

Answer. I have seen crab-trees in it, but thought the plum-trees the most numerous.

Question by same. Did you know or hear of any other place in this part of the country, called or known by the name of either a crab or plum-orchard at that time?

Answer. No.

Question by the same. Did you know or hear of any crab or plum-orchard within eight or ten miles of this place, except the one we are now at?

Answer. No.

Question by same. Is not the branch on which this crab or plum-orchard is situated, the first branch or creek of notoriety on the northeast side of Harrod's lick?

Answer. Yes.

Question by same. How far up and down this branch, from this place, did this orchard extend, as you suppose?

Answer. About a quarter of a mile each way, perhaps a little further up the branch.

Question by same. Where did you suppose the greatest proportion of of this orchard lay, with regard to the general course of this branch?

Answer. On the northwest side.

Question by same. Do you not think there was a sufficient number of crab-trees in this orchard to induce some to call it a crab-orchard?

Answer. I have no doubt some might have called it a crab orchard, as well as we called it a plum-orchard.

Question by same. Was it not common, in early days, in this country, for different companies of hunters, &c., to call creeks, roads, licks, &c., by different names?

Answer. Isaac Hite and two of the Sodowsky's called (what is now called Brush creek, and Boon's creek) Saveren's creek and Bowman's creek. And further this deponent saith not.

ISAAC CLINKINBEARD.

Also, Joshua Stamper, of lawful age, and being first duly sworn, deposeth and saith that he became acquainted with this place in the summer, 1780, and that he then, and ever since, knew it by the name of the Plum-orchard, and that the said orchard extended up and down this branch, but that the greatest part of it lay on the north side of the branch, where we now are; and that then there were a great number of crab-trees in the bounds of said orchard, sufficient to induce some to call it a crab orchard.

Question by William Mitchell. Is not the creek on which this orchard is situated, the first that is notorious on the northeast side of Harrod's lick?

Answer. Yes.

Question by same. How far up and down this branch, from this place, did the orchard extend; and on which side of said branch did the greatest proportion of the orchard lie?

Answer. About a quarter of a mile up and down the branch. And the greatest proportion of orchard lay on the northwest side of said branch.

Question by the same. Was it not common, in early times, for roads, creeks, &c., to be called by different names by different companies?

Answer. Yes. And further this deponent saith not.

JOSHUA STAMPER.

Also, Benedict Couchman, of lawful age, being first duly sworn, deposeth and saith that he became acquainted with this place in the year 1781, and that he then, and ever since, knew it by the name of the Plum-orchard; that said orchard extended up and down the branch where we now are, but the greatest part thereof lay north-west of this place; that there were a number of crab-trees in said bounds, and that he did not know any crab or plum-orchard within five or six miles of this place, except the one where we now are; and further, the said orchard is situated on the first notorious creek northeast of Harrod's lick.

Question by Wm. Mitchell. Do you not think it probable this orchard was, in early days, called by some a crab-orchard?

Answer. I don't doubt but it was; in fact I know it was.

Question by same. Did not different companies of hunters, in this country, in early days, call creeks, roads, &c., by different names at times?

Answer. Hyte and the Sodowskys called the creek that is now called (Brush and Boon's creek,) Saveren's and Bowman's creeks. And further saith not.

his
BENEDICT × COUCHMAN.
mark.

Patrick Jordan, of lawful age, and duly sworn, deposeth and saith that he came to this place in the year 1775, with a certain James Douglass, a surveyor, and the said Douglass called this place the Crab-orchard.

Question by Wm. Mitchell. Were you not pretty generally acquainted with this part of the country at that time and since?

Answer. Yes.

Question by same. Did you ever hear or know of any other place called and known by the name of a crab-orchard in this part of the country?

Answer. No.

Question by the same. Which course did you think the orchard lay or extended from the spring where we now are?

Answer. About 80 poles above, and the same below, but chiefly north-west.

Question by same. From the appearance at that time, whether did you think the crab-trees or plum-trees were the most numerous in the orchard alluded to?

Answer. I think the crab-trees were the most numerous.

Question by same. Did you not, at that time, and since, frequently hear this place called a crab-orchard?

Answer. I did; but I heard some call it a plum-orchard.

Question by same. Was it not common at that time for different companies to call creeks, roads, &c., by different names?

Answer. It was.

Question by same. In the year 1780, if you had seen an entry of land which called for a crab-orchard on a branch emptying into the first large creek N. E. of Harrod's lick, would you not have thought that the same ought to be surveyed at this place?

Answer. Certainly I would. And further saith not.

PATRICK JORDAN.

Also, Charles McNary, of lawful age, being first duly sworn, deposeth and saith that he has been acquainted with this place ever since the year 1789, and that he always heard it called a plum-orchard.

Question by William Mitchell. Which did you think, that the crab-trees or plum-trees were most numerous?

Answer. I think that, in general, the plum-trees were most numerous, though in some places the plum-trees were most numerous.

Question by same. Did you ever know as notorious a crab or plum-orchard on the waters of Hinkson?

Answer. No, I did not.

Question by same. Did you ever hear of, or know any other place in this part of the country, called or known by the name of a crab or plum-orchard?

Answer. No.

Question by same. How far did you suppose the orchard to extend above the spring at which we are?

Answer. I cannot tell, but it extended a considerable distance above the spring.

Question by the same. Did you not know the bounds of said orchard as well as any other piece of land which you never measured?

Answer. Yes.

Question by same. What was the extent of said orchard, as you suppose or think?

Answer. Nearly a mile square.

Question by same. Does not said orchard extend from this place to the corner shown by you, June 2d day last, to John Boyd, surveyor?

Answer. Yes.

Question by the same. How far do you think this orchard extended up and down the branch where we now are?

Answer. I suppose about one hundred and thirty or forty poles above, and perhaps as far below. And further saith not.

CHARLES McNARY.

The foregoing depositions, Robert McMillan, Malchi Couchman, Wm. Clinkinbeard, Isaac Clinkinbeard, James Duncan, Joshua Stamper, Benedict Couchman, Patrick Jordan, and Charles McNary, were taken before us at the time and place in the preamble mentioned. Given under our hands and seals.

S. DONNELL.
JOHN BOYD.

Know all men by these presents, that I, Thomas Patton, of Bourbon, Kentucky, have this day sold to Leonard K. Bradley the improvements on which I now live, including all the improvements claimed by the widow Maxwell adjoining my improvements aforesaid, for the sum of five hundred dollars, for which said Bradley hath this day executed his notes to me for the same. I bind myself in consequence thereof, to vest said Bradley with all the right, title, claim and interest that I have in and to the premises, which is to be all the interest that I have in Ledgerwood's claim, agreeable to a bond executed by Samuel Ledgerwood to Wm. Maxwell, sen., the benefit of which bond I agree to let the said Bradley have it, am not to be liable in any case whatever; if disputes or interferences of any kind should ever take place; but am, by our agreement, to be entirely clear as if I never had had a claim to the premises aforesaid; but that part of the aforesaid bond, that John Wilbarger has a claim to in consequence of the purchase of the land he now lives on, as purchased by said Wilbarger from Maxwells and Bush out of Ledgerwood's claim, the said Bradley, by this agreement, is to have no claim to, neither do I agree to give him the benefit thereof.

(Signed) THOMAS PATTON.

Teste: Samuel Henderson.
Wm. Mitchell.

A copy, test: THO. ARNOLD, c. b. c. c.

Some endorsements are made upon the back of the original, which are illegible.

Att. THO. ARNOLD, c. b. c. c.

January 1, 1783.

John Taylor, as'see, &c. enters 500 acres, part of a treasury warrant, No. 11642, on every side of Samuel Henderson pre-emption at H*errods* lick.

A copy, teste: THO. JONES.

Samuel Henderson, ass'ee, of Abraham Mitchell, enters 1000 acres on pre-emption warrant, on the waters of Licking creek, on the hunters' trace from Boonsborough to the lower salt spring, adjoining all round his settlement. Entered June 23d, 1780.

A copy, teste: WM. STEELE, s. w. c.

Samuel Henderson, ass'ee, of Abraham Mitchell, enters 400 acres by virtue of a certificate, &c., lying at Harrod's lick at the hunter's trace from Boonsborough to the lower salt springs, on the waters of Licking.

A copy, teste: WM. STEELE, S. W. C.
February 3, 1780.

James Henderson, assignee of Abraham Mitchell, this day claimed a settlement and pre-emption to a tract of land in the district of Kentucky, lying at Harrod's lick, on the hunters' trace from this to the lower salt springs, on the waters of Licking, by the said Mitchell raising a crop of corn in the county in the year 1775: satisfactory proof being made to the court, they are of opinion that the said Henderson has a right to a settlement of 400 acres of land, to include the above location, and the pre-emption of 1000 acres adjoining. Certificate not to issue until the further order of the court.

A copy, teste: WILLIS LEE, D. C. C. A.

Note.—Certificate issued for 1400 acres at Bryal's station, the 27th day December, 1779.

W. LEE, D. C. C. A.

End of the chancery record referred to in the bill of exceptions.

And afterwards, to wit: At the May term of the court aforesaid, in the year 1820, (until which time this cause was continued,) came the defendants, by their counsel, and the complainants failing further to prosecute this suit, it is ordered that the same be dismissed, and that the defendants recover against the complainants, William Mitchell, James Legerwood, and Samuel Legerwood, their costs in this behalf expended.

Bradley to deed Adair.

This indenture, made this 7th day of February, 1817, between Leonard K. Bradley, of the county of Fayette, and commonwealth of Kentucky, of the one part, and Francis Adair, of the county of Bourbon, and commonwealth aforesaid, of the other part: witnesseth that, in consideration of five shillings current money in hand paid, the receipt whereof is hereby acknowledged, he, the said Leonard K. Bradley, hath bargained, sold, and confirmed, and by these presents doth bargain, sell, and confirm, to him the said Francis Adair, the following tract or piece of land lying and being in the county of Bourbon aforesaid, situate on the waters of Clear creek, being a part of a claim of seven thousand acres lying between Stoner and Hinkston, patented to him, the said Leonard K. Bradley, and James Brown, and bounded as follows, to wit: Beginning at a cherry stump in the division line between William Mitchell and the Maxwells; thence S. 18°, E. 153 poles, to a hickory and elm in Wilson's line; thence with the same S. 59°, W. 96 poles, to a blue ash, black ash and shall hickory; thence N. 32°, W. 123 poles, to a stake near two sugar-trees in Bradley's line; thence with the same N. 45°, E. 120 poles, to a honey locust in Legerwood's line; thence with the same N. 75°, E. 20 poles, to the beginning, containing one hundred acres of land. To have and to hold the aforesaid one hundred acres of land, with the appurtenances, to him, the said Francis Adair, his heirs and assigns, for ever, free from the claim or claims of him, the said Leonard K. Bradley, his heirs, executors, and administrators, and all and every other person or persons whatsoever, claiming the same by, through, or under him, the said Leonard K. Bradley; also, hereby warrants and defends the aforesaid premises from the claim of James Brown, who holds the same jointly with him the said Bradley; and, also, against the claim of William Legerwood, which last claim he, the said Bradley, has heretofore procured. But it is expressly understood that the said Leonard K. Bradley warrants and defends against no other claim or claims whatsoever. In witness whereof, he, the said Leonard K. Bradley, hath hereunto set his hand and affixed his seal, the day and year first above written.

LEON. K. BRADLEY. [SEAL.]

Acknowledged in presence of
Wm. Rogers.
Wm. Moore.

Bourbon County Court, *Clerk's Office, sct., June* 7, 1817.

This deed of bargain and sale from Leonard K. Bradley to Francis Adair was, on the 7th day of last April, proved before me by the oath of Wm. Rogers, and on this day by the oath of William Moore, to be the act and deed of the said Bradley; and the same is thereupon duly recorded in my office.

Attest: THO. P. SMITH, C. D. C. C.

Adair to deed Roseberry. This indenture, made this 19th day of May, 1823, between Francis Adair, and Julia his wife, of the county of Nicholas, and commonwealth of Kentucky, of the one part, and Hugh Roseberry, of the county of Bourbon, and commonwealth aforesaid, of the other part, witnesseth: that, in consideration of, five shillings current money in hand paid, the receipt whereof is hereby acknowledged, he, the said Francis Adair, and Julia his wife, hath bargained, sold, and confirmed, and by these presents do bargain, sell, and confirm, to him, the said Hugh Roseberry, the following tract or piece of land, lying and being in the county of Bourbon aforesaid, situate on the waters of Clear creek, being part of a claim of 7000 acres, lying between Stoner and Hinkson, patented to Leonard K. Bradley and James Brown, and bounded as follows, to wit: Beginning at a cherry stump in the division line between William Mitchell and Maxwells; thence S. 18°, E. 153 poles, to a hickory and elm in Wilson's line; thence with said Wilson's line S. 59°, W. 96 poles, to a blue ash, black ash and small hickory; thence N. 32°, W. 123 poles, to a stake, near two sugar trees in Bradley's line; thence with the said Bradley's line N. 45°, E. 120 poles, to a honey-locust in Legerwood's line; N. 73°, E. 20 poles to the beginning, containing one hundred acres of land. To have and to hold the aforesaid one hundred acres of land, with the appurtenances, to him, the said Hugh Roseberry, his heirs and assigns for ever, free from the claim or claims of him the said Francis Adair and Julia his wife, his executors and administrators, and all and every other person or persons whatsoever, claiming the same by, through, or under him, the said Francis Adair, and Julia his wife; and, also, the said Francis do hereby warrant and defend the aforesaid tract or piece of land from the claim of James Brown, who holds the same jointly with him, the said Leonard K. Bradley, and he, the said Francis, and Julia his wife; also warrants and defends the claim of William Legerwood, the same being warranted by said Bradley, to him the said Francis Adair and Julia his wife, both of which claims the said Francis, and Julia his wife, warrants and defends as above mentioned, to the said Hugh Roseberry, his heirs, &c., for ever; but it is expressly understood that the said Adair and wife does not warrant nor defend against *against* any other claim or claims, except as before mentioned. In testimony whereof, the said Francis Adair and wife have hereunto set their hands and seals, the day and date above written.

FRANCIS ADAIR. [SEAL.]
her
JULIA × ADAIR. [SEAL.]
mark.

NICHOLAS COUNTY, *sct.*

I, Andrew S. Hughes, clerk of the county court for the county aforesaid, do hereby certify that the foregoing deed of bargain and sale from Francis Adair, and Julia his wife, to Hugh Roseberry, was this day produced to me in my office, and acknowledged by the said Adair to be their act and deed; and she, the said Julia, being by me privily examined, separate and apart from her said husband, declared that she freely and voluntarily relinquished her right of dower in the land and premises contained in said deed, without the threats or persuasions of her said husband; and, thereupon, the same is certified to the clerk of the county court for the county of Bourbon, in which county the premises lie. Given under my hand, this 19th day of May, 1823.

ANDREW S. HUGHES, *Clk.*
By JOHN P. CAMPBELL, D. C.

BOURBON COUNTY COURT, *Clerk's Office, sct. May 22d,* 1823.

This deed of bargain and sale from Francis Adair and wife to Hugh Roseberry, was this day produced to me; and the same, together with the certificate thereon endorsed, is thereupon duly recorded in my office.

Att: THO. P. SMITH, C. B. C.
By A. P. McILVAIN, D. C.

COMMONWEALTH OF KENTUCKY, *Bourbon County, sct.*

I, Thomas P. Smith, clerk of the county court for the county aforesaid, do certify that the foregoing deeds from Leonard K. Bradley to Francis Adair, and from Francis Adair to Hugh Roseberry, are duly copied from the record in my office.

Given under my hand, this 9th day of November, 1831.

Starke &c., to deed Graves.

This indenture, made this first day of October, in the year 1824, between Thomas Starke, and Jane his wife, and Polly Starke, of the county of Bourbon, and State of Kentucky, of the one part, and John Graves, of the county and State aforesaid, of the other part, witnesseth: that, for and in consideration of the sum of one dollar to them in hand paid, the receipt whereof is hereby acknowledged to have been paid by said Graves, they do, by these presents, sell, alien, convey, and confirm unto the said Graves, his heirs and assigns for ever, all their claim, title, and interest in and to a certain tract or parcel of land situated, lying, and being on Cane-ridge, in the county and State aforesaid, it being their undivided interest in and to the tract of land purchased by Thomas Starke, deceased, in his life time, under and by virtue of a sale made by H.

M. Bledsoe, esquire, a deputy sheriff of said county, who acted under a fi. fa. ex'on to him directed from the clerk's office of the circuit court of this county, in favor of Martin Pickett's heirs, and vs. William Ledgerwood's heirs and William Mitchell: and the said party of the first part do, also, by these presents, sell, alien, and convey all their interest, title, and claim to said land, which they have or can have derived from their said ancestor and father, Thomas Starke, deceased, in consideration of said Thomas Starke, deceased, having obtained, by assignment, a bond for the title of the land hereby conveyed; which bond was originally given by said William Legerwood to William Mitchell, and assigned and transferred by him to said Starke, deceased. And they, the party of the first part, do hereby sell, alien, convey, and confirm all their right, title, claim, and interest in and to the land hereby conveyed, which they derive from their said ancestor, Thomas Starke, deceased, under and by virtue of any division or conveyance whatever from Phelps' heirs or others in and to any claim in the name of Martin Pickett. The above mentioned tract or parcel of land, hereby conveyed, being the whole of their interest in and to all the land which they derive as heirs of said Thomas Starke, deceased, from him as their father; the same being as yet undivided. But, whereas said Polly Starke is entitled to an interest in the dower which has been allotted to her mother, Sarah Starke, and has conveyed the same to William Henderson, it is understood that her interest in said dower, as aforesaid, is excepted, and not hereby conveyed. The aforesaid tract of land hereby conveyed, supposed to contain about sixty acres, be the same more or less.

To have and to hold the aforesaid tract of land, with the privileges and appurtenances thereunto belonging or in any wise appertaining, to the only propor use, benefit, and behoof, of the said Graves, his heirs and assigns forever. And the said Thomas Starke and Polly Starke, heirs of said Thomas Starke, deceased, do hereby warrant and bind themselves, their heirs, &c., for ever to defend the aforesaid tract or parcel of land to the said Graves, his heirs, &c., against the claims of themselves, their heirs, and all persons claiming by, through, or under them, and against the claim or claims of said Martin Pickett, his heirs, &c., and against the claim or claims of all persons claiming by, through, or under them, or either of them, but against the claim of no other person or persons. In testimony whereof, the said parties of the first part have hereunto set their hands and seals, the date above.

THOMAS STARKE. [SEAL.]
her
JANE ⋈ STARKE. [SEAL.]
mark.
POLLY STARKE. [SEAL.]

Teste: WM. ROSEBERRY.
H. M. BLEDSOE.

BOURBON COUNTY COURT, *Clerk's Office, sct. December* 18, 1824.

This deed of bargain and sale from Thomas Starke, and Jane his wife, and Polly Starke, to John Graves, was this day acknowledged before me by the said Thomas Starke, and Jane his wife, and Polly Starke, to be their act and deed: and she, the said Jane, being examined by me, separate and apart from her said husband, declared that she did freely and willingly seal and deliver this deed, the contents of which were read and explained to her;

that she wished not to retract it, but was willing, and consented for the same to be recorded; and the same is, thereupon, duly recorded in my office.

Att. THO. P. SMITH, c. b. c.
By A. C. DICKERSON, d. c.

Starke to deed Graves.

This indenture, made and entered into this sixteenth day of March, in the year one thousand eight hundred and twenty-seven, by and between Daniel Starke, one of the children and heirs of Thomas Starke, deceased, of the county of Bourbon, and State of Kentucky, of the first part, and John Graves, of the same county and State, of the second part, witnesseth: that, for and in consideration of the sum of one dollar in hand paid by the said Graves, the receipt whereof is hereby acknowledged by the said Daniel Starke, he, the said Daniel Starke, does by these presents sell, alienate, and convey and confirm unto the said Graves, and his heirs for ever, all his claim, title, and interest in and to a certain tract or parcel of land situate, lying, and being on Cane-ridge, in the county aforesaid, it being his undivided interest in and to the tract of land purchased by said Thomas Starke, in his life time, under and by virtue of a sale made by Hiram M. Bledsoe, a deputy sheriff of said county, who acted under an execution to him directed from the clerk's office of the circuit court for said county, in favor of Martin Pickett's heirs and against William Legerwood's heirs, and William Mitchell; and the said Daniel Starke does, also, by these presents, sell, alienate, and convey to the said John Graves all his interest, title, and claim to the said land which he has, or can have derived from his said father, Tho- Starke, deceased, in consideration of said Thomas Starke having obtained, by assignment, a bond for the title of a part of the land hereby conveyed; which bond was originally given by William Legerwood to William Mitchell, and assigned and transferred by him to said Thomas Starke, deceased: and the said Daniel Starke does, by these presents, sell, alienate, and convey unto the said Graves and his heirs for ever, all the right, title, and interest which he holds or is entitled to within the bounds of said Martin Pickett's claim, as descended to him from his said ancestor, Thomas Starke; and the said Daniel doth also, by these presents, sell, alienate, and convey unto the said Graves and his heirs for ever, all interest, title, and right which he has in any land by means of any compromise or division of land had between the heirs of John Phelps, deceased, and the heirs of said Thomas Starke, deceased. It being the true intent of this conveyance to invest the said Graves with the title to all the land that said Daniel Starke acquired by descent from his said father, Thomas Starke, deceased, either in the claim of the said Legerwood or Pickett, which interest is undivided. To have and to hold the aforesaid tract or parcel of land to the only proper use and benefit of the said John Graves, and his heirs for ever, together with all and singular the appurtenances thereunto belonging or in any wise appertaining: and the said Daniel Starke doth by these presents warrant, and will for ever defend the land hereby conveyed to the said John Graves and his heirs forever, free from the claim of the said Daniel Starke, and all persons claiming through or under him, but against the claim of no other person whatsoever.

In testimony whereof, the said Daniel Starke has hereto set his hand and affixed his seal, the day and year first above written.

The words "a part of" and "land" interlined before signing.

DANIEL F. STARKE, [seal.]

Attest: H. M. Bledsoe,
Wm. McCue.

BOURBON COUNTY COURT, *Clerk's Office, sct. April 2d*, 1827.

This deed of bargain and sale from Daniel F. Starke to John Graves, being this day produced in my office and acknowledged before me by the said Daniel to be his act and deed, is duly recorded in my office.

Attest: THO. P. SMITH, C. B. C.
By JO. T. MILLS, D. C.

Eastin, &c., Commissioners to deed R. Bramblett.

This indenture entered into this 18th day of May, in the year 1808, between Zachariah Eastin and William B. Branham, commissioners appointed by the circuit court for the county of Bourbon, of the one part, and Reuben Bramblet, of the said county, of the other part, witnesseth: that, whereas the said Reuben Bramblet hath obtained a decree of the said circuit court, in chancery sitting, against Francis Brooke, and Nancy his wife, late Nancy Pickett, Charles Marshall, and Lucy his wife, late Lucy Pickett, William *Clarken* and Milly his wife, late Milly Pickett, Staunton Slaughter, and Judith his wife, late Judith alias Juda Pickett, Betsey Pickett, and the unknown heirs and representatives of Letty Johnson, late Letty Pickett, all heirs and devisees by the last will and testament of Martin Pickett, deceased, for the title of five hundred acres of land in said county, part of a survey of five thousand acres patented in the name of said Martin Pickett, deceased, on the dividing ridge between Stoner's and Hinkson's forks of Licking; and whereas the said devisees against whom said decree is rendered, are non-residents, and without the jurisdiction of said court, and the said court has appointed the said Zachariah Eastin and William B. Branham as commissioners to convey said title to the said Reuben Bramblet, pursuant to an act of Assembly in such case made and provided: Now, the said Zachariah Eastin and William B. Branham, by virtue of said appointment as commissioners, and by virtue of the powers vested in them by law, do hereby bargain, sell, alien, convey, and confirm unto the said Reuben Bramblet, all the land designated on the plat and report of the commissioners, returned in said suit, by the figures 1, 2, 3, 4, 5, 6, 7, 8, containing four hundred and ninety-six acres; beginning at figure 1, a sugar-tree and box-elder, corner to Duncan's survey; thence, with a line of the same S. 44° W. 71 poles, to an ash stump and poplar; thence S. 46° E. 240 poles to two blue ashes, black oak and box-elder at 3, in Brooke's,—Gillispie's line; thence, N. 45° E. 106 poles, to a stooping black locust, on a hill side, near the head of a drain: thence, north 189 poles, to a stake in the Iron-works road, near four sugar-trees, two on each side of said road; thence S. 89° E. 140 poles, to a stake in a line of Wilkinson's survey of 400 acres; thence with a line of said survey N. 12° W. 158 poles to a stake at the intersection of said Wilkinson's line, with a line of John South's pre-emption; thence with said line S. 88° W. 198 poles, to a stake in said line near the mouth of a lane; thence S. 42° W. 261 poles, to the beginning; containing four hundred and ninety-six acres as aforesaid, lacking four acres of the said five hundred acres decreed by said circuit court to said Reuben Bramblet, together with all improvements, appendages, profits, and appurtenances, whatsoever, to the said tract belonging or in any wise appertaining.

To have and to hold the lands hereby conveyed, with all and singular the appurtenances, and every part thereof, to the said Reuben Bramblet, his heirs and assigns for ever: and the said commissioners, for and on behalf of the said devisees of the said Martin Pickett, deceased, including the said unknown representatives of the said Letty Johnson, do covenant that the said

Reuben Bramblett shall be completely vested with the legal title, and shall hold said land, hereby conveyed, free of, and from the claim of the said devisees, as fully as the law shall permit and allow; and the said commissioners do further covenant and bind said devisees of the said Martin Pickett, deceased, and their heirs, executors, administrators, and assigns, to Reuben Bramblet, his heirs and assigns, that the said premises hereby conveyed are now free from all titles, liens, charges, and incumbrances whatsoever, done or suffered to be done by said devisees; and the said devisees, known and unknown, shall and will warrant and for ever defend the said premises, hereby conveyed, against themselves, their heirs and assigns, and all persons claiming by, from, or under them, in as ample a manner as the law invests said commissioners with power to covenant for and bind said devisees of said Martin Pickett, deceased. In testimony whereof, the said Zachariah Eastin and William B. Branham, as commissioners aforesaid, have hereunto set their hands and affixed their seals, the date above written.

ZACHARIAH EASTIN. [SEAL.]
WILLIAM B. BRANHAM. [SEAL.]

BOURBON COUNTY, *May 18th*, 1808.

This deed of bargain and sale from Zachariah Eastin and William B. Branham, as commissioners for the purposes expressed in the within deed, was produced in my office, and acknowledged by said commissioners as the law directs, and thereupon admitted to record.

Attest:

WILL. GARRARD, Jr., C. B. C.

COMMONWEALTH OF KENTUCKY, *Bourbon County, to wit*:

I, Thomas P. Smith, clerk of the county court for the county aforesaid, do certify that the foregoing deed from Martin Pickett's heirs to Reuben Bramblet is duly copied from the record in my office. Given under my hand, this 26th day of April, 1831.

THO. P. SMITH,
By ROB'T E. RANKIN, D. C.

Sheriff to deed Starke.

This indenture, made this seventh day of October, one thousand eight hundred and seventeen, between Hiram M. Bledsoe, deputy for Joseph L. Stephens, high sheriff of the county of Bourbon, of the one part, and Thomas Starke, of the same county, of the other part, witnesseth: that, whereas on the first day of September, in the present year, a fieri facias execution, of the date last aforesaid, issued from the clerk's office of the Bourbon circuit court in favor of Martin Pickett's heirs, directed to the sheriff of said county, commanding him that, of the estate of Samuel Legerwood, John Alexander and Molly his wife, James McClanahan and Peggy his wife, William Hill and Rebecca his wife, and Robert Gill and Isabella his wife, and William Mitchell, he cause to be made the sum of eleven dollars 42½ cents, which lately in said court had been adjudged to the said Pickett's heirs for their costs by them expended in the defence of a certain suit in chancery, &c., as by said execution will appear; which execution duly came to the hands of said Hiram M. Bledsoe, and was by him levied on one thousand acres of land, entered, surveyed, and patented in the name of William Legerwood, and was returned not sold for want of time.

And afterwards, to wit, on the 16th day of the present month, a venditioni exponas, of the date last aforesaid, issued from the said office to said sheriff directed, commanding him to expose to sale that estate of the said Samuel Legerwood, John Alexander and Molly his wife, James McClanahan and Peggy his wife, William Hill and Rebecca his wife, Robert Gill and Isabella his wife, and William Mitchell, to the value of eleven dollars seventy five and a half cents, to satisfy the said Pickett's heirs their costs as aforesaid; which writ of venditioni exponas was returnable on the Saturday succeeding the first Monday in December next thereafter. By virtue of which said writs of execution and vinditioni exponas, the said Bledsoe, deputy as aforesaid, having first duly advertised the time and place of sale according to law, did, on the sixteenth day of the present month, upon the premises, expose to sale at public auction the right, title, and interest, of the said Samuel Legerwood, John Alexander and wife, James McClanahan and wife, Robert Gill and wife, and William Mitchell, in the aforesaid one thousand acres of land, or so much thereof as would satisfy the aforesaid sum of eleven dollars and 75½ cents costs, fifty-eight cents sheriff's commission, and fifty cents for the bond to be taken of the purchaser, making in the whole the sum of twelve dollars eighty-three and a half cents: and the said Thomas Starke then and there became the purchaser of all, except six acres thereof, for the said sum of twelve dollars eighty-three and a half cents, he being the highest bidder therefor; to secure the payment of which the said Starke then and there executed a bond, with security, payable in three months thereafter; but which amount he has since paid, as appears from the receipt of William Rogers, agent of Pickett's heirs, endorsed on said bond. Now, therefore, in consideration of the premises, and by virtue of the powers vested in him by law as deputy aforesaid, he, the said Bledsoe, as deputy as aforesaid, doth by these presents grant, bargain, and sell, convey and confirm unto the said Starke the said one thousand acres of land, excepting thereout six acres thereof, to be laid off in a square on the southeastern corner thereof situate in said county on Cane-ridge, on the waters of Clear creek, a branch of Hinkson's fork of Licking. To have and to hold all the right, title, and interest of the aforesaid Samuel Legerwood, and John Alexander and Molly his wife, James McClanahan and Peggy his wife, William Hill and Rebecca his wife, Robert Gill and Isabella his wife, and William Mitchell, in and to the said tract of land, except six acres as above excepted, to him, the said Starke and his heirs, for ever, as fully and completely as by virtue of the sale and executions aforesaid, the laws in such cases made and provided, and his office of deputy sheriff, he can convey the same. In witness whereof, the said Bledsoe, deputy for Joseph L. Stephens, high sheriff of said county, hath hereunto set his hand and seal, the day and year first before written.

HIRAM M. BLEDSOE, [SEAL.]
Deputy for Joseph L. Stephens, Sheriff of
Bourbon County.

BOURBON COUNTY COURT, *Clerk's Office, sct.* *October* 18, 1817.

This deed of bargain and sale from Hiram M. Bledsoe, deputy for Joseph L. Stephens, high sheriff, to Thomas Starke, was this day acknowledged before me, by the said Bledsoe, to be his act and deed; and the same is thereupon duly recorded in my office.

Attest: THO. P. SMITH, C. B. C.

COMMONWEALTH OF KENTUCKY, *Bourbon County, to wit*:

I, Thomas P. Smith, clerk of the county court for the county aforesaid, do certify that the foregoing deed from Hiram M. Bledsoe to Thomas Starke, is duly copied from the record in my office.

Given under my hand, this 29th day of April, 1831.

THO. P. SMITH,
By ROB. E. RANKIN, D. C.

BOURBON CIRCUIT COURT, *sct.* *November Term*, 1816.

LEGERWOOD'S HEIRS and WILLIAM MITCHELL,
against
MARTIN PICKETT'S HEIRS.
} *In Chancery.*

Decree referred to in exceptions and the executions.

This day came the defendants, by their counsel; and the complainants not appearing, though solemnly called, it is therefore considered by the court that they be non-suited, and that they pay to the defendants their costs herein expended.

Thereupon, the following executions issued, to wit:

The Commonwealth of Kentucky to the Sheriff of Bourbon County, greeting:

We command you that, of the estate of Samuel Ledgerwood, John Alexander and Molly his wife, James McClanahan and Peggy his wife, William Hill and Rebecca his wife, Robert Gill and Isabella his wife, heirs of William Ledgerwood, deceased, and William Mitchell, you cause to be made the sum of eleven dollars forty-two and a half cents, which lately, in our Bourbon circuit court, was adjudged to the heirs of Martin Pickett, deceased, for their costs by them expended in the defence of a certain suit in chancery, instituted in our said court by the said heirs of Legerwood and Mitchell against the said heirs of Pickett, whereof the said heirs of Legerwood and Mitchell are convict, as appears to us of record; and that you have the same before the judges of our Bourbon circuit court, at the court-house in Paris, on the Saturday succeeding the first Monday in October next, to render to the said Pickett's heirs of their costs aforesaid; and have then there this writ. Witness, Thomas Arnold, clerk of our said court, this 16th day of October, 1817, and in the 26th year of the commonwealth.

THO. ARNOLD.

Notes on the Bank of Kentucky or branches, or notes on any incorporated bank of the State, or notes on the Treasury of the United States, may be accepted by the officer in discharge of this execution.

W. ROGERS,
Agent Pickett's heirs.

Executed on one thousand acres of land entered, surveyed, and patented, in the name of William Legerwood, and not sold for the want of time.

H. M. BLEDSOE, D. S.
For JOSEPH L. STEPHENS, S. B. C.

The Commonwealth of Kentucky to the Sheriff of Bourbon County, greeting:

We command you, that you expose to sale that estate of Samuel Legerwood, John Alexander and Molly his wife, James McClanahan and Peggy his wife, William Hill and Rebecca his wife, Robert Gill and Isabella his wife, heirs of William Ledgerwood, and William Mitchell, to the value of eleven dollars 75½ cents costs, which, according to our command, you have taken into your hands, and which remains in your hands unsold, as you have certified to the judges of our Bourbon circuit court, to satisfy the heirs of Martin Pickett, deceased, of costs aforesaid, whereof in our said court they have recovered execution against the said Legerwood's heirs and William Mitchell by virtue of a judgment in the same court; and that you have the same before the judges of our said court, at the court-house, in Paris, on the Saturday succeeding the first Monday in December next, to render to the said Pickett's heirs of the costs aforesaid; and have then there this writ.

Witness, Thomas Arnold, clerk of our said court, this 16th day of October, 1817, and in the 26th year of the commonwealth.

THO. ARNOLD.

Notes on the Bank of Kentucky or branches, or notes on any incorporated bank of the State, or notes on the Treasury of the United States, may be accepted by the officer in discharge of this execution.

W. ROGERS,
Agent for Pickett's heirs.

The land which was executed by virtue of a fi. fa. execution that issued formerly from the clerk's office of the Bourbon circuit court on the within described judgment, by virtue of the within venditioni exponas, was exposed to public sale on the 16th of October, 1817, on the premises, after having been advertised according to law, and Thomas Starke became the purchaser of the whole tract of one thousand acres, except six acres off the southeast corner of said 1000 acres, (for further particulars see deed from sheriff to Starke in county court clerk's office,) for the sum of twelve dollars eighty-three cents; for which he executed the enclosed bond, with Wm. Henderson his security, payable in three months, being the credit at which said land sold.

H. M. BLEDSOE, D. S.
For JOSEPH L. STEPHENS, S. B. C.

Copies. Attest:

J. M. ARNOLD, D. C. B. C. C.

CHRISTOPHER GREENUP, Esq., *Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:*

2 Patents of Bradley and Brown referred to in bill of exceptions.

Know ye, that, by virtue and in consideration of part of a land office treasury warrant, No. 11462, and entered the 23d day of January, 1783, there is granted by the said commonwealth unto Leonard K. Bradley and James Brown, said Brown assignee of Bradley, who was assignee of Thomas Brooks and David Gillispie, the said Brooks being assignee of said Gillispie, a certain tract or parcel of land containing four thousand three hundred and forty-two acres, by survey bearing date the 19th day of September, 1798, lying and being in the county of Bourbon, on the waters of Stoner's and Hinkson's forks of Licking, and bounded as followeth, to wit: beginning where the lower salt spring trace crosses Stoner's fork, at a hickory and sugar-tree, and running with said trace N. 30°, E. 34 poles, to a stake, N. 22°, E. 40 poles, to a box-elder, N. 12°, E 28 poles, to a buckeye, N. 7½, E. 16 poles, to a sugar-tree, N. 17°, E. 84 poles, to a buckeye, N. 12°, W. 10 poles, to a buckeye, N. 12°, E 40 poles, to a buckeye and walnut, N. 20°, E. 78 poles, to a hickory and buckeye, N. 10°, E. 28 poles, to a white oak and elm, N. 25°, E. 22 poles, to a boxelder, N. 8°, E. 28 poles, to a honey-locust and white-oak, N. 28°, E. 120 poles, to two boxelders, N. 14°, E. 60 poles, to Harrods' lick, a stake; thence N. 45°, E. 725 poles, to a stake; thence S. 52°, E 510 poles, to a buckeye and sugar-tree; thence S. 38°, W. 1084 poles, to a hackberry and two boxelders, standing on the bank of Stoner, on the upper side of the mouth of Indian creek; thence down Stoner, and binding on the north side thereof, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Leonard K. Bradley and James Brown, and their heirs for ever.

In witness whereof, the said Christopher Greenup, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed at Frankfort, on the seventh day of March, in the year of our Lord one thousand eight hundred and six, and of the commonwealth the fourteenth.

CHRISTO. GREENUP.

By the Governor.
John Rowan, *Sec'y.*

A copy. Attest:

JNO. M. FOSTER, R. L. O.
By E. A. MACURDY, D. R.

Christopher Greenup, Esq., *Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:*

Know ye, that by virtue and in consideration of part of a land office treasury warrant, No. 11462, and entered the 23d day of January, 1783, there is granted by the said commonwealth unto Leonard K. Bradley and James Brown, said Brown assignee of Bradley, who was assignee of Thomas Brooks and David Gillispie, the said Brooks being assignee of said Gillispie, a certain tract or parcel of land containing two thousand six hundred and fifty-eight acres, by survey bearing date the 19th day of September, 1798, lying and being in the county of Bourbon, on the waters of Stoner's and Hinkson's forks of Licking, adjoining a survey of 4342 acres in the name of Brooks and Gillispie, and bounded as followeth, to wit: beginning at a stake corner to said survey, and runs N. 45°, E. 937 poles, to two small elms and two small walnuts, on the bank of Hinkson; thence up Hinkson, and binding thereon, 406 poles, when reduced to a straight line, to two sugar-trees and two box-elders, standing on the bank of Hinkson, on the south side thereof; thence S. 38°, W. 1064 poles, to a buckeye and sugar-tree, corner to the above survey of 4342 acres; thence, with a line of the same, N. 52°, west 510 poles, to the beginning, with its appurtenances.

To have and to hold the said tract or parcel of land, with its appurtenances, to the said Leonard K. Bradley and James Brown and their heirs for ever.

In witness whereof, the said Christopher Greenup, Esq., Governor of the commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed at Frankfort, on the seventh day of March, in the year of our Lord one thousand eight hundred and six, and of the commonwealth the fourteenth.

CHRISTO. GREENUP.

By the Governor.
JOHN ROWAN.

A copy. Attest: JNO. M. FOSTER, R. L. O.
By E. A. MACURDY, D. R.

UNITED STATES OF AMERICA,
7 *Circuit Court, Kentucky District,* } *sct.*

I, John H. Hanna, clerk of the seventh circuit court of the United States of America, in and for the district of Kentucky, do hereby certify that the foregoing pages contain a full, true, and complete transcript of the record and proceedings in the cause therein mentioned, of Mitchell, Ledgerwood, &c., against Martin Pickett's heirs, &c.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this 4th day of January, in the year of our Lord one thousand eight hundred and thirty-two, and in the 56 year of our independence.

[SEAL.] JNO. H. HANNA.

THE UNITED STATES OF AMERICA.

The President of the United States to the Judges of the Seventh Circuit Court of the United States in and for the Kentucky District, greeting:

That, because in the record and proceedings, and also in rendering a judgment between Samuel Legerwood, William Mitchell, William Henderson, Hugh Roseberry, and John Graves, plaintiffs, on a petition for a writ of error coram vobis, and John Scott and Elizabeth his wife, late Elizabeth B. Pickett, and others, heirs and devisees of Martin Pickett, deceased, defendants, manifest error hath intervened to the great damage of the said John Scott and Elizabeth B. his wife, late Elizabeth B. Pickett, and others, heirs and devisees of Martin Pickett, deceased, as in their complaint hath been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice be done to the parties in this behalf:

You are hereby commanded that, if judgment be given, then, under your seal, you distinctly and openly send the record and proceedings in the suit aforesaid, with all things concerning them, and this writ; so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, the present seat of the National Government, that the record and proceedings aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness, the honorable John Marshall, Chief Justice of the Supreme Court of the United States, at Washington, this 28th day of November, Anno Domini 1831, and in the 56th year of the independence of the United States.

Attest: JNO. H. HANNA, C. C. C. K. D.

Allowed by

JOHN BOYLE, J. D. K.

To Samuel Legerwood, William Mitchell, William Henderson, Hugh Roseberry, and John Graves.

Whereas a writ of error hath been issued by the clerk of the seventh circuit court of the United States of America in and for the Kentucky district, on behalf of John Scott and Elizabeth his wife, late Elizabeth B. Pickett, and others, heirs and devisees of Martin Pickett, decased, returnable to the Supreme Court of the United States at the city of Washington, the present seat of the National Government, on the second Monday in January next, to reverse a judgment entered up by the seventh circuit court of the United States in and for the Kentucky district, wherein the said Samuel Legerwood, William Mitchell, William Henderson, Hugh Roseberry, and John Graves, were plaintiffs, and the said John Scott and Elizabeth his wife, late Elizabeth B Pickett, and others, heirs and devisees of Martin Pickett, deceased, were defendants.

These, therefore, are to cite and command you, that you be and appear in the Supreme Court of the United States at the city of Washington on the day aforesaid, then and there to hear the errors assigned for the reversal of the said judgment, and to be heard, if any thing you have to say, upon the said writ of error.

Witness my hand, as Judge of the district of Kentucky, and one of the judges of the seventh circuit court of the United States in and for the Kentucky district, this 28th day of November, Anno Domini 1831.

JOHN BOYLE, J. D. K.

Executed on Will. Henderson on the 30th December, and on Hugh Roseberry and John Graves on the 31st December, 1831; Samuel Ledgerwood not found, lives in Indiana: Mitchell not found.

MOSES M. PRICE, D. M. K. D.

3 def'ts	6	00
2 do. not found		42
45 miles travel	2	15
	$8	57